

As Introduced

133rd General Assembly

Regular Session

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S. B. No. 237

Senator Johnson

**Cosponsors: Senators McColley, Brenner, Hoagland, Obhof, Schaffer, Rulli,
Roegner**

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 Duty to 3
Retreat 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) "Tort action" has the same meaning as in section 14
2307.60 of the Revised Code. 15

(4) "Reasonable force" has the same meaning as in section 16

2901.09 of the Revised Code.

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(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 following apply:~~

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(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 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, including deadly force, in the same circumstances in
which a use or threatened use of force, including deadly force,
is authorized under section 2901.09 of the Revised Code.

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

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

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

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(2) A person who uses force against another, who is an 46
aggressor, if the person initially provoked the aggressor to use 47
force or threat of force against the person, unless either of 48
the following apply: 49

(a) The use of force or threat of force by the aggressor 50
is sufficient for the person's reasonable belief that the person 51
is in imminent danger of death or great bodily harm, and the 52
person exhausts all reasonable means of escape other than the 53
use of force or threat of force that is likely to cause death or 54
great bodily harm to the aggressor. 55

(b) The use of force or threat of force by the aggressor 56
continues or resumes after the person, in good faith, withdraws 57
from physical contact and clearly indicates the desire to 58
withdraw and terminate the use of force or threat of force by 59
the person or the aggressor. 60

(3) A person who uses force to resist an unlawful arrest, 61
if the person uses the force against a peace officer and the 62
person using the force knows the person making the arrest is a 63
peace officer; 64

(4) A person who uses force to resist a lawful arrest, if 65
the person uses the force against a person making the arrest or 66
against a person assisting in making the arrest; 67

(5) A person who uses force against a peace officer, or a 68
person assisting a peace officer, if the peace officer is acting 69
in the performance of the peace officer's official duties; 70

(6) A person who uses force while committing a violation 71
of section 2923.13 of the Revised Code. 72

(D) The fact that an affirmative defense is not available 73
to a person under division (C) of this section does not affect 74

the person's right to bring any affirmative defense available to 75
the person under the common law of this state prior to the 76
effective date of this amendment. 77

(E) Except as provided in division (C) of this section, 78
the immunity from civil action provided in division (A) of 79
section 2901.092 of the Revised Code, and the requirement for an 80
award in a civil action of reasonable attorney's fees, court 81
costs, compensation for loss of income, and expenses incurred 82
that is set forth in division (C) of that section, apply 83
regarding a tort action described in this section. 84

(F) (1) In a tort action filed against a person related to 85
the person's use or threatened use of force, including deadly 86
force, against another, the person has a right to a pretrial 87
immunity hearing, as described in division (F) (2) of this 88
section, regarding a claim of immunity from liability for 89
injury, death, or loss to another based on self-defense, defense 90
of another, or defense of that person's residence. 91

(2) A person who is a defendant in a tort action of the 92
type described in division (F) (1) of this section who would like 93
a pretrial hearing as described in that division shall file a 94
pretrial motion claiming that the person used or threatened to 95
use the force, including deadly force, in self-defense, defense 96
of another, or defense of that person's residence. The filing of 97
the motion establishes a prima facie claim of self-defense, 98
defense of another, or defense of that person's residence. Upon 99
the filing of the motion, the court shall hold a pretrial 100
immunity hearing and shall grant the motion and hold that the 101
person used or threatened to use the force, including deadly 102
force, in self-defense, defense of another, or defense of that 103
person's residence unless the party seeking to overcome the 104

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

Sec. 2901.05. (A) (1) Every person accused of an offense is 109
presumed innocent until proven guilty beyond a reasonable doubt, 110
and the burden of proof for all elements of the offense is upon 111
the prosecution. The burden of going forward with the evidence 112
of an affirmative defense, and the burden of proof, by a 113
preponderance of the evidence, for an affirmative defense other 114
than self-defense, defense of another, or defense of the 115
accused's residence presented as described in division (B) (1) of 116
this section, is upon the accused. 117

(2) A person accused of an offense that involved the 118
person's use or threatened use of force, including deadly force, 119
against another has a right to a pretrial immunity hearing, as 120
described in division (B) (1) of this section, regarding a claim 121
of immunity from criminal prosecution based on self-defense, 122
defense of another, or defense of that person's residence. 123

(B) (1) A person ~~is allowed~~ accused of an offense that 124
involved the person's use or threatened use of force, including 125
deadly force, against another who would like a pretrial hearing 126
as described in division (A) (2) of this section shall file a 127
pretrial motion claiming that the person used or threatened to 128
act use the force, including deadly force, in self-defense, 129
defense of another, or defense of that person's residence. ~~If,~~ 130
~~at~~ The filing of the motion establishes a prima facie claim of 131
self-defense, defense of another, or defense of that person's 132
residence. Upon the ~~trial filing~~ of a person who is accused of 133
an offense that involved the person's use of force against 134

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

(2) Subject to division (B)(3) of this section, a person 145
is presumed to have acted in self-defense or defense of another 146
when using ~~defensive or threatening to use deadly~~ force that is 147
intended or likely to cause death or great bodily harm to 148
another if any of the following apply: 149

(a) The person against whom the defensive deadly force is 150
used or threatened is in the process of unlawfully and without 151
privilege to do so entering, or has unlawfully and without 152
privilege to do so entered, the residence ~~or, occupied vehicle~~ 153
~~occupied by,~~ or place of business or employment, of the person 154
using or threatening to use the defensive deadly force, or any 155
other place in which the person using or threatening to use the 156
deadly force is lawfully present; 157

(b) The person against whom the deadly force is used or 158
threatened is by force or threat removing or attempting to 159
unlawfully remove another person against the other person's will 160
from any place that the person using or threatening to use the 161
deadly force is lawfully present; 162

(c) The person using or threatening to use the deadly 163
force knows or has reason to believe that any of the conditions 164

set forth in division (B)(2)(a) or (b) of this section are 165
occurring or have occurred. 166

(3) The presumption set forth in division (B)(2) of this 167
section does not apply if ~~either,~~ at the time the deadly force 168
is used or threatened, any of the following is true 169
circumstances are present: 170

(a) The person against whom the ~~defensive~~ deadly force is 171
used or threatened has a right to be in, ~~or is a lawful resident~~ 172
~~of,~~ the residence or vehicle place where the person used or 173
threatened to use the deadly force, and a protective or no- 174
contact order is not in effect against the person against whom 175
the deadly force is used or threatened. 176

(b) The person sought to be removed as described in 177
division (B)(2)(b) of this section is a child or grandchild or 178
is otherwise in the lawful custody or under the lawful 179
guardianship of the person against whom the deadly force is used 180
or threatened. 181

(c) The person who uses or threatens to use the ~~defensive~~ 182
deadly force uses or threatens to use it while engaged in a 183
criminal offense, while attempting to escape from the scene of a 184
criminal offense that the person has committed, or while using 185
the residence, place of business or employment, or occupied 186
~~vehicle and the person is unlawfully, and without privilege to~~ 187
~~be, in that residence or vehicle further a criminal offense.~~ 188

(d) The person against whom the deadly force is used or 189
threatened is a law enforcement officer who has entered or is 190
attempting to enter a residence, place of business or 191
employment, or occupied vehicle in the lawful performance of the 192
law enforcement officer's official duties, and either the 193

officer identified himself or herself as a law enforcement 194
officer in accordance with any applicable law or the person 195
using or threatening to use the deadly force knows or reasonably 196
should know that the person who has entered or is attempting to 197
enter is a law enforcement officer. 198

(4) The presumption set forth in division (B) (2) of this 199
section is a rebuttable presumption and may be rebutted by a 200
preponderance of the evidence, provided that the prosecution's 201
burden of proof remains ~~proof beyond a reasonable doubt by clear~~ 202
and convincing evidence as described in ~~divisions (A) and~~ 203
division (B) (1) of this section. 204

(C) As part of its charge to the jury in a criminal case, 205
the court shall read the definitions of "reasonable doubt" and 206
"proof beyond a reasonable doubt," contained in division ~~(D)~~ (E) 207
of this section. 208

(D) As used in this section: 209

(1) An "affirmative defense" is either of the following: 210

(a) A defense expressly designated as affirmative; 211

(b) A defense involving an excuse or justification 212
peculiarly within the knowledge of the accused, on which the 213
accused can fairly be required to adduce supporting evidence. 214

(2) "Dwelling" means a building or conveyance of any kind 215
that has a roof over it and that is designed to be occupied by 216
people lodging in the building or conveyance at night, 217
regardless of whether the building or conveyance is temporary or 218
permanent or is mobile or immobile. As used in this division, a 219
building or conveyance includes, but is not limited to, an 220
attached porch, and a building or conveyance with a roof over it 221
includes, but is not limited to, a tent. 222

(3) "Residence" means a dwelling in which a person resides 223
either temporarily or permanently or is visiting as a guest. 224

(4) "Vehicle" means a conveyance of any kind, whether or 225
not motorized, that is designed to transport people or property. 226

(E) "Reasonable doubt" is present when the jurors, after 227
they have carefully considered and compared all the evidence, 228
cannot say they are firmly convinced of the truth of the charge. 229
It is a doubt based on reason and common sense. Reasonable doubt 230
is not mere possible doubt, because everything relating to human 231
affairs or depending on moral evidence is open to some possible 232
or imaginary doubt. "Proof beyond a reasonable doubt" is proof 233
of such character that an ordinary person would be willing to 234
rely and act upon it in the most important of the person's own 235
affairs. 236

Sec. 2901.09. (A) As used in this section, ~~"residence" and~~ 237
~~"vehicle" have~~ and in sections 2901.091 and 2901.092 of the 238
Revised Code: 239

(1) "Peace officer" has the same ~~meanings~~ meaning as in 240
section ~~2901.05-2935.01~~ of the Revised Code. 241

(2) "Reasonable force" means the use or threatened use of 242
force that a reasonable person would judge to be necessary to 243
prevent an injury or loss and can include deadly force if a 244
person reasonably believes that using or threatening to use such 245
force is necessary to avoid injury or risk to the person's life 246
or safety or the life or safety of another. 247

(3) "Residence" has the same meaning as in section 2901.05 248
of the Revised Code. 249

(B) For purposes of any section of the Revised Code that 250
sets forth a criminal offense, ~~a~~ the following apply: 251

(1) A person who is not engaged in illegal activity has no 252
duty to retreat from any place where the person is lawfully 253
present before using or threatening to use reasonable force, 254
including deadly force, in self-defense, defense of another, or 255
defense of that person's residence, as authorized under this 256
section. 257

(2) Except as provided in division (C) (2) of this section, 258
a court or jury as trier of fact shall not consider the 259
possibility of retreat as a factor in determining whether a 260
person who used or threatened to use force, including deadly 261
force, reasonably believed that such force was necessary to 262
prevent injury, loss, or risk to life or safety. 263

(3) A person who lawfully is in that person's residence 264
has no duty to retreat before using force in self-defense, 265
defense of another, or defense of that person's residence, and a 266
person who lawfully is an occupant of that person's vehicle or 267
who lawfully is an occupant in a vehicle owned by an immediate 268
family member of the person has no duty to retreat before using 269
force in self-defense or defense of another is justified in the 270
use of or threat to use reasonable force, including deadly 271
force, when the person reasonably believes that such force is 272
necessary to defend the person or another from any actual or 273
imminent use of unlawful force. 274

(4) A person is justified in the use of or threat to use 275
reasonable force, including deadly force, even if an alternative 276
course of action is available. 277

(5) A person may be wrong in the estimation of the danger 278
or the force necessary to repel the danger as long as there is a 279
reasonable basis for the person's belief and the person acts 280
reasonably in response to that belief. 281

(C) The affirmative defense of self-defense, defense of another, or defense of that person's residence is not available in a criminal action to any of the following: 282
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(1) A person who uses force during the person's attempted commission, commission, or escape after the commission or attempted commission of a felony offense of violence; 285
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(2) A person who uses force against another, who is an aggressor, if the person initially provoked the aggressor to use force or threat of force against the person, unless either of the following apply: 288
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(a) The use of force or threat of force by the aggressor is sufficient for the person's reasonable belief that the person is in imminent danger of death or great bodily harm, and the person exhausts all reasonable means of escape other than the use of force or threat of force that is likely to cause death or great bodily harm to the aggressor. 292
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(b) The use of force or threat of force by the aggressor continues or resumes after the person, in good faith, withdraws from physical contact and clearly indicates the desire to withdraw and terminate the use of force or threat of force by the person or the aggressor. 298
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(3) A person who uses force to resist an unlawful arrest, if the person uses the force against a peace officer and the person using the force knows the person making the arrest is a peace officer; 303
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(4) A person who uses force to resist a lawful arrest, if the person uses the force against a person making the arrest or against a person assisting in making the arrest; 307
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(5) A person who uses force against a peace officer, or a 310

person assisting a peace officer, if the peace officer is acting 311
in the performance of the peace officer's official duties; 312

(6) A person who uses force while committing a violation 313
of section 2923.13 of the Revised Code. 314

(D) The fact that an affirmative defense is not available 315
to a person under division (C) of this section does not affect 316
the person's right to bring any affirmative defense available to 317
the person under the common law of this state prior to the 318
effective date of this amendment. 319

Sec. 2901.091. (A) As used in this section, "forcible 320
felony" means any of the following: 321

(1) A felony violation of section 2903.01, 2903.02, 322
2903.03, 2903.04, 2903.11, 2903.12, 2905.01, 2905.02, 2907.02, 323
2907.03, 2909.02, 2909.03, 2911.01, 2911.02, 2911.11, or 2911.12 324
of the Revised Code; 325

(2) Any felony offense not identified in division (A) (1) 326
of this section that involves the use or threatened use of 327
physical force or violence against any individual. 328

(B) A person who reasonably believes that another person 329
is committing or is about to commit a forcible felony and who 330
uses or threatens to use reasonable force, including deadly 331
force, as authorized under section 2901.09 of the Revised Code, 332
is justified in using or threatening to use reasonable force, 333
including deadly force, against the other person to prevent or 334
halt the commission of the forcible felony. 335

Sec. 2901.092. (A) A person who uses or threatens to use 336
reasonable force, including deadly force, in accordance with 337
section 2901.09 or 2901.091 of the Revised Code shall be immune 338
from arrest, the filing of criminal charges, criminal 339

prosecution, or civil action arising from the person's use or 340
threatened use of the reasonable force, including deadly force. 341

(B) A law enforcement officer may use standard 342
investigating procedures for investigating the use or threatened 343
use of force, including deadly force, but the law enforcement 344
officer shall not arrest a person for the person's use or 345
threatened use of force, including deadly force, unless the law 346
enforcement officer has probable cause to believe that the 347
person's use or threatened use of force, including deadly force, 348
was not justified under section 2901.09 or 2901.091 of the 349
Revised Code. 350

(C) The court shall award reasonable attorney's fees, 351
court costs, compensation for loss of income, and all expenses 352
incurred by the defendant in defense of any civil action brought 353
by a plaintiff if the court finds that the defendant is immune 354
from criminal prosecution or civil action as provided in 355
division (A) of this section. 356

Section 2. That existing sections 2307.601, 2901.05, and 357
2901.09 of the Revised Code are hereby repealed. 358

Section 3. This act shall be known as the Ohio Duty to 359
Retreat Act. 360