

As Introduced

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H. B. No. 541

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A B I L L

To enact sections 2305.61, 2305.62, 2305.63, 2306.64, 1
2305.65, and 2305.66 and to repeal section 2305.40 2
of the Revised Code to provide statutory criteria 3
for when a person may use force or deadly force to 4
defend the person or another person or to prevent 5
or terminate a trespass on or illegal interference 6
with property; to establish a presumption related 7
to use of defensive force intended or likely to 8
cause death or serious physical harm of when the 9
user of the defensive force holds a reasonable 10
fear of imminent peril of death or serious 11
physical harm; to provide that a person authorized 12
to use deadly force or defensive force intended or 13
likely to cause death or serious physical harm 14
generally does not have a duty to retreat; and to 15
repeal the existing statutory provisions regarding 16
the immunity of an owner, lessee, or renter of 17
real property as to self-defense or defense of 18
others. 19

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

Section 1. That sections 2305.61, 2305.62, 2305.63, 2306.64, 20
2305.65, and 2305.66 of the Revised Code be enacted to read as 21
follows: 22

Sec. 2305.61. As used in sections 2305.61 to 2305.66 of the 23
Revised Code: 24

(A) " Dwelling " means a building or conveyance of any kind 25
that has a roof over it and that is designed to be occupied by 26
people lodging in the building or conveyance at night. " Dwelling " 27
includes any building or conveyance of a type described in this 28
division, regardless of whether the building or conveyance is 29
temporary or permanent, or mobile or immobile. " Dwelling " includes 30
any attached porch or tent that has a roof over it and that is 31
designed to be occupied by people lodging in it at night. 32

(B) " Residence " means a dwelling in which a person resides 33
either temporarily or permanently or is visiting as an invited 34
guest. 35

(C) " Third person " means, in a context in which force, deadly 36
force, or defensive force is used, any person other than the 37
person who uses the force, deadly force, or defensive force and 38
other than the person against whom the force, deadly force, or 39
defensive force is used. 40

(D) " Vehicle " means a conveyance of any kind, whether or not 41
motorized, that is designed to transport people or property. 42

Sec. 2305.62. (A) A person is justified in using force, 43
except deadly force, against another when and to the extent that 44
the person using the force reasonably believes that the use of the 45
force is necessary to defend the person's self or a third person 46
against the imminent use of unlawful force by the person against 47
whom the force is used. 48

(B) A person who is justified in using force pursuant to 49
division (A) of this section is justified in the use of deadly 50
force against the other person and does not have a duty to retreat 51
if either of the following applies: 52

(1) The person using the deadly force reasonably believes 53
that the use of the deadly force is necessary to prevent imminent 54
death or serious physical harm to the person's self or a third 55
person or to prevent the imminent commission of a forcible felony. 56

(2) The circumstances described in division (A) or (B) of 57
section 2305.63 of the Revised Code apply. 58

(C) For the purposes of divisions (A) and (B) of this 59
section, a person who unlawfully and by force enters or attempts 60
to enter a person's dwelling, residence, or occupied vehicle is 61
presumed to be doing so with the intent to commit an unlawful act 62
involving force or violence. 63

Sec. 2305.63. (A)(1) A person is justified in the use of 64
defensive force against another that is intended or likely to 65
cause death or serious physical harm to the other person and does 66
not have a duty to retreat if the person using the defensive force 67
holds a reasonable fear of imminent peril of death or serious 68
physical bodily harm to the person's self or a third person. 69

(2) For the purposes of division (A)(1) of this section, a 70
person is presumed to have held a reasonable fear of imminent 71
peril of death or serious physical harm to the person's self or a 72
third person when using defensive force that is intended or likely 73
to cause death or serious physical bodily harm to another if both 74
of the following apply: 75

(a) The person against whom the defensive force was used was 76
in the process of unlawfully and forcefully entering, or had 77
unlawfully and forcibly entered, a dwelling, residence, or 78

occupied vehicle, or that person had removed or was attempting to 79
remove another against the other person's will from a dwelling, 80
residence, or occupied vehicle. 81

(b) The person who uses the defensive force knew or had 82
reason to believe that an unlawful and forcible entry or unlawful 83
and forcible act of a type described in division (A)(2)(a) of this 84
section was occurring or had occurred. 85

(3) The presumption set forth in division (A)(2) of this 86
section does not apply in any of the following circumstances: 87

(a) The person against whom the defensive force is used has 88
the right to be in, or is a lawful resident of, the dwelling, 89
residence, or vehicle, and that person is not the subject of a 90
protection order issued or consent agreement approved pursuant to 91
section 2903.213, 2903.214, 2919.26, or 3113.31 of the Revised 92
Code, a protection order issued by a court of another state, or a 93
protection order issued pursuant to section 2945.04 of the Revised 94
Code. For the purposes of this division, a person who has the 95
right to be in, or is a lawful resident of, a dwelling, residence, 96
or vehicle includes, but is not limited to, the owner, lessee, or 97
titleholder of the dwelling, residence, or vehicle. As used in 98
this division, "protection order issued by a court of another 99
state" has the same meaning as in section 2919.27 of the Revised 100
Code. 101

(b) The person sought to be removed by the person against 102
whom the defensive force was used as described in division 103
(A)(2)(a) of this section is a child or grandchild, or is 104
otherwise in the lawful custody or under the lawful guardianship 105
of, the person against whom the defensive force is used. 106

(c) The person who uses the defensive force is engaged in an 107
unlawful activity or is using the dwelling, residence, or occupied 108
vehicle to further an unlawful activity. 109

(d) 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 self 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.

(B) 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.

(C) For the purposes of divisions (A) and (B) of this section, 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.

Sec. 2305.64. (A) 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.

(B) A person who is justified in using force pursuant to 141
division (A) of this section is justified in the use of deadly 142
force against the other person only if the person using the deadly 143
force reasonably believes that the use of the deadly force is 144
necessary to prevent the imminent commission of a forcible felony. 145

(C) For the purposes of divisions (A) and (B) of this 146
section, a person does not have a duty to retreat if the person is 147
in a place where the person has a right to be. 148

(D) For the purposes of this section, a person who unlawfully 149
and by force enters or attempts to enter a person's dwelling, 150
residence, or occupied vehicle is presumed to be doing so with the 151
intent to commit an unlawful act involving force or violence. 152

Sec. 2305.65. (A) A person who uses force, deadly force, or 153
defensive force as permitted in section 2305.62, 2305.63, or 154
2305.64 of the Revised Code is justified in using the force, 155
deadly force, or defensive force and is immune from criminal 156
prosecution or liability and from liability for injury, death, or 157
loss to person or property in any civil action that is based on or 158
related to the use of the force, deadly force, or defensive force, 159
unless the person against whom the force, deadly force, or 160
defensive force was used is a law enforcement officer who was 161
acting in the performance of the officer's official duties, and 162
the officer identified self in accordance with any applicable law, 163
or the person using the force, deadly force, or defensive force 164
knew or reasonably should have known that the person was a law 165
enforcement officer. As used in this division, "criminal 166
prosecution" includes arresting, detaining in custody, and 167
charging or prosecuting the defendant. 168

(B) A law enforcement agency may use standard procedures for 169
investigating a person for the use of force, deadly force, or 170
defensive force as described in division (A) of this section, but 171

the agency may not arrest 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. 172
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(C) 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 described in division (A) of this section and the court finds that the immunity provided in division (A) of this section applies to the person, the court shall 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. 176
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Sec. 2305.66. The justifications for the use of force, deadly force, or defensive force described in sections 2305.62, 2305.63, 2305.64, and 2305.65 of the Revised Code are not available to a person to whom either of the following applies: 184
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(A) The person is attempting to commit, committing, or escaping after the commission of a forcible felony. 188
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(B) The person initially provokes the use of force against the person's self, unless either of the following applies: 190
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(1) 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. 192
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(2) 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. 198
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Section 2. That section 2305.40 of the Revised Code is hereby 202
repealed. 203

Section 3. The General Assembly declares that its intent in 204
enacting sections 2305.61 to 2305.66 and repealing section 2305.40 205
of the Revised Code in Sections 1 and 2 of this act is, in part, 206
to supersede the doctrine of Ohio law developed and affirmed by 207
the state's courts in numerous decisions, including *State v.* 208
Cassano (2002), 96 Ohio St. 3d 94; *State v. Thomas* (1997), 77 Ohio 209
St. 3d 323; *State v. Williford* (1990), 49 Ohio St. 3d 247; *State* 210
v. Jackson (1986), 22 Ohio St. 3d 281; *State v. Robbins* (1979), 58 211
Ohio St. 2d. 74; *Graham v. State* (1918), 98 Ohio St. 77; *Marts v.* 212
State (1875), 26 Ohio St. 162; *Columbus v. Dawson* (Franklin 213
County, 1986), 33 Ohio App. 3d 141; *et al.*, that generally holds 214
that a person who is outside of the person's place of residence or 215
business and who is attacked has a duty to retreat before using 216
deadly force in self-defense or in defense of another. 217