

As Introduced

135th General Assembly

Regular Session

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H. B. No. 233

Representatives Williams, Hillyer

Cosponsors: Representatives Johnson, McClain, Carruthers, Schmidt, Willis

A BILL

To amend section 2901.05 of the Revised Code to 1
enact the Self-Defense Protection Act to create 2
a pretrial procedure for a person asserting 3
self-defense, defense of another, or defense of 4
that person's property. 5

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

Section 1. That section 2901.05 of the Revised Code be 6
amended to read as follows: 7

Sec. 2901.05. (A) Every person accused of an offense is 8
presumed innocent until proven guilty beyond a reasonable doubt, 9
and the burden of proof for all elements of the offense is upon 10
the prosecution. The burden of going forward with the evidence 11
of an affirmative defense, and the burden of proof, by a 12
preponderance of the evidence, for an affirmative defense other 13
than self-defense, defense of another, or defense of the 14
accused's residence presented as described in division (B) (1) of 15
this section, is upon the accused. 16

(B) (1) A person is allowed to act in self-defense, defense 17
of another, or defense of that person's residence. 18

(a) A person who is accused of an offense that involved 19
the person's use of self-defense, defense of another, or defense 20
of that person's residence may file a pretrial motion asserting 21
that the accused person acted in self-defense, defense of 22
another, or defense of that person's residence and requesting 23
that the court establish a rebuttable presumption that the 24
accused person acted in self-defense, defense of another, or 25
defense of that person's residence. 26

(b) If the accused person described in division (B)(1)(a) 27
of this section files a pretrial motion, the court shall hold a 28
pretrial hearing. If, at the pretrial hearing of the person who 29
is accused of an offense that involved the person's use of force 30
against another, there is evidence presented that tends to 31
support by a preponderance of the evidence that the accused 32
person used the force in self-defense, defense of another, or 33
defense of that person's residence, the court shall grant the 34
pretrial motion. 35

(c) If the court grants the pretrial motion, at the trial 36
of the accused person there shall be a rebuttable presumption 37
that the accused person acted in self-defense, defense of 38
another, or defense of that person's residence. The prosecution 39
has the burden to rebut this presumption by proving beyond a 40
reasonable doubt that the accused person did not use the force 41
in self-defense, defense of another, or defense of that person's 42
residence, as the case may be. 43

(d) If a person who is accused of an offense that involved 44
the person's use of self-defense, defense of another, or defense 45
of that person's residence does not file a pretrial motion 46
described in division (B)(1)(a) of this section, or the person 47
files a pretrial motion described in division (B)(1)(a) of this 48

section, but the court denies the pretrial motion, at the trial 49
of the accused person there is no rebuttable presumption that 50
the accused person acted in self-defense, defense of another, or 51
defense of that person's residence. However, at the trial of the 52
accused person, the person is not precluded from asserting that 53
the accused person acted in self-defense, defense of another, or 54
defense of that person's residence. 55

(e) If the accused person described in division (B) (1) (d) 56
of this section asserts that the accused person acted in self- 57
defense, defense of another, or defense of that person's 58
residence, and if at the trial of a person who is accused of an 59
offense that involved the person's use of force against another, 60
there is evidence presented that tends to support by a 61
preponderance of the evidence that the accused person used the 62
force in self-defense, defense of another, or defense of that 63
person's residence, the prosecution must prove beyond a 64
reasonable doubt that the accused person did not use the force 65
in self-defense, defense of another, or defense of that person's 66
residence, as the case may be. 67

(2) Subject to division (B) (3) of this section, a person 68
is presumed to have acted in self-defense or defense of another 69
when using defensive force that is intended or likely to cause 70
death or great bodily harm to another if the person against whom 71
the defensive force is used is in the process of unlawfully and 72
without privilege to do so entering, or has unlawfully and 73
without privilege to do so entered, the residence or vehicle 74
occupied by the person using the defensive force. 75

(3) The presumption set forth in division (B) (2) of this 76
section does not apply if either of the following is true: 77

(a) The person against whom the defensive force is used 78

has a right to be in, or is a lawful resident of, the residence 79
or vehicle. 80

(b) The person who uses the defensive force uses it while 81
in a residence or vehicle and the person is unlawfully, and 82
without privilege to be, in that residence or vehicle. 83

(4) The presumption set forth in division (B) (2) of this 84
section is a rebuttable presumption and may be rebutted by a 85
preponderance of the evidence, provided that the prosecution's 86
burden of proof remains proof beyond a reasonable doubt as 87
described in divisions (A) and (B) (1) of this section. 88

(C) As part of its charge to the jury in a criminal case, 89
the court shall read the definitions of "reasonable doubt" and 90
"proof beyond a reasonable doubt," contained in division (E) of 91
this section. 92

(D) As used in this section: 93

(1) An "affirmative defense" is either of the following: 94

(a) A defense expressly designated as affirmative; 95

(b) A defense involving an excuse or justification 96
peculiarly within the knowledge of the accused, on which the 97
accused can fairly be required to adduce supporting evidence. 98

(2) "Dwelling" means a building or conveyance of any kind 99
that has a roof over it and that is designed to be occupied by 100
people lodging in the building or conveyance at night, 101
regardless of whether the building or conveyance is temporary or 102
permanent or is mobile or immobile. As used in this division, a 103
building or conveyance includes, but is not limited to, an 104
attached porch, and a building or conveyance with a roof over it 105
includes, but is not limited to, a tent. 106

(3) "Residence" means a dwelling in which a person resides	107
either temporarily or permanently or is visiting as a guest.	108
(4) "Vehicle" means a conveyance of any kind, whether or	109
not motorized, that is designed to transport people or property.	110
(E) "Reasonable doubt" is present when the jurors, after	111
they have carefully considered and compared all the evidence,	112
cannot say they are firmly convinced of the truth of the charge.	113
It is a doubt based on reason and common sense. Reasonable doubt	114
is not mere possible doubt, because everything relating to human	115
affairs or depending on moral evidence is open to some possible	116
or imaginary doubt. "Proof beyond a reasonable doubt" is proof	117
of such character that an ordinary person would be willing to	118
rely and act upon it in the most important of the person's own	119
affairs.	120
Section 2. That existing section 2901.05 of the Revised	121
Code is hereby repealed.	122
Section 3. This act shall be known as the Self-Defense	123
Protection Act.	124