



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Jeff Hobday

### **H.B. 590**

132nd General Assembly  
(As Introduced)

**Reps.** Vitale and Keller, Hood, Antani, Brinkman, Becker, Thompson, Schaffer, Retherford, Brenner, Zeltwanger, Lang, Riedel, Hoops, Merrin, Sprague, Householder, Dean

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### **BILL SUMMARY**

- Shifts the burden of proof in a criminal case for the affirmative defense of self-defense, defense of another, or defense of a person's residence from the defendant to the prosecution, as described in the next dot point.
- Allows a defendant to request a pretrial hearing regarding the affirmative defense, and requires the prosecution to prove beyond a reasonable doubt that the defendant did not act in self-defense, defense of another, or defense of that person's residence.
- Modifies the rebuttable presumption of self-defense or defense of another that currently applies when the person against whom the defensive force (changed to deadly force) is used unlawfully enters the residence of the person using the force or a vehicle occupied by that person.
- Adds to the list of exceptions to the rebuttable presumption of self-defense.
- Provides that, for purposes of criminal offenses, a person is justified in using or threatening to use reasonable force, including deadly force, when the person reasonably believes that such force is necessary to defend the person or another from any actual or imminent use of unlawful force.
- Provides that a person who reasonably believes that another person is committing or is about to commit a forcible felony is justified in using or threatening to use reasonable force, including deadly force, against the other person to prevent or halt the offense.
- Provides civil immunity to a person who used or threatened to use reasonable force, unless it is established beyond a reasonable doubt in a pretrial immunity hearing

that the person did not act in self-defense, defense of another, or defense of that person's residence.

- For civil and criminal actions, eliminates the duty of an individual to retreat before using force in self-defense, defense of another, or defense of the person's residence if the person is in a place that the person lawfully has a right to be.

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## **CONTENT AND OPERATION**

### **Self-defense and the defense of others in a criminal case**

#### **Burden of proof and immunity**

The bill shifts the burden of proof in a criminal case for the affirmative defense of self-defense, defense of another, or defense of a person's residence from the defendant to the prosecution, as described below. Under current law, if an accused asserts this affirmative defense, the burden is on the accused to go forward with the evidence of the defense and establish by a preponderance of the evidence that the accused acted in self-defense, defense of another, or defense of the person's residence.

Under the bill, a person accused of an offense that involved the person's use or threatened use of force against another need only request a pretrial hearing regarding the affirmative defense, under a mechanism established in the bill. The bill grants a person accused of such an offense a right to a pretrial hearing regarding a claim of immunity from criminal prosecution based on self-defense, defense of another, or defense of that person's residence. If the person requests such a pretrial hearing, the filing of the motion establishes a prima facie claim of self-defense, defense of another, or defense of that person's residence. The court then must hold a pretrial immunity hearing and must grant the motion and hold that the person used or threatened to use the force in self-defense, defense of another, or defense of that person's residence unless the prosecution proves beyond a reasonable doubt that the defendant did not use or threaten to use the force in any of those manners.<sup>1</sup>

#### **Presumption of self-defense**

##### **Establishment of presumption**

Under current law, in a criminal case, subject to two exceptions (see below), a person is rebuttably presumed (see below) 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 if the person against whom the defensive force is used unlawfully and

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<sup>1</sup> R.C. 2901.05(A) and (B)(1).



without privilege to do so is entering or has entered the residence of the person using the defensive force or a vehicle occupied by that person. The bill modifies the rebuttable presumption so that it refers to "deadly force" instead of "defensive force" and covers a threat to use such force as well as an actual use of such force, and expands the modified presumption to apply when a person uses or threatens to use deadly force if any of the following apply:<sup>2</sup>

- The person against whom the deadly force is used or threatened unlawfully and without privilege to do so is entering or has entered the residence, occupied vehicle, or place or business or employment of the person using or threatening to use deadly force, or in any other place in which the person using or threatening to use deadly force is lawfully present.
- The person against whom the deadly force is used or threatened is by force or threat removing or attempting to remove another person against the other person's will from any place where the person using or threatening deadly force is lawfully present.
- The person using or threatening to use deadly force knows or has reason to believe that any of the conditions above are occurring or have occurred.

### **Exceptions to the presumption**

The bill also modifies the list of exceptions to the rebuttable presumption described above. Under current law, the presumption that a person acted in self-defense or defense of another does not apply if: (1) the person against whom 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 or vehicle and the person is unlawfully, and without privilege to be, in that residence or vehicle. Under the bill, the presumption does not apply if, at the time deadly force is used or threatened, any of the following circumstances are present:<sup>3</sup>

- The person against whom deadly force is used or threatened has a right to be in the place where the other person used or threatened to use deadly force, and a protective or no-contact order is not in effect against the person against whom deadly force is used or threatened.

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<sup>2</sup> R.C. 2901.05(B)(2) and (4).

<sup>3</sup> R.C. 2901.05(B)(3).



- The person being removed against that person's will, as described above, is a child or grandchild or is otherwise in the lawful custody or under the guardianship of the person against whom deadly force is used or threatened.
- The person who uses or threatens to use deadly force does so while engaged in a criminal offense, while attempting to escape from the scene of a crime the person committed, or while using the residence, place of business or employment, or occupied vehicle to further a criminal offense.
- The person against whom deadly force is used or threatened is a law enforcement officer who has entered or is attempting to enter a residence, place of business or employment, or occupied vehicle in the lawful performance of the officer's duties, and either the officer identified him or herself as a law enforcement officer or the person using deadly force knows or reasonably should know that the person who has entered or is attempting to enter is a law enforcement officer.

### **Rebuttal of presumption**

The bill retains the current provision that specifies that the presumption is a rebuttable presumption that may be rebutted by a preponderance of the evidence, but adds language specifying that the prosecutor's burden of proof remains proof beyond a reasonable doubt as described above in "**Burden of proof and immunity.**"<sup>4</sup>

### **Reasonable force**

The bill provides that, for purposes of any Revised Code provision setting forth a criminal offense, a person is justified in using or threatening to use reasonable force, including deadly force, when the person reasonably believes that such force is necessary to defend the person or another from any actual or imminent use of unlawful force, even if an alternative course of action is available. "Reasonable force" is defined in the bill as force that a reasonable person would judge to be necessary to prevent an injury or loss and can include deadly force if a person reasonably believes that using or threatening to use such force is necessary to avoid injury or risk to the person's life or the life or safety of another.<sup>5</sup>

The bill also provides that a person who reasonably believes that another person is committing or is about to commit a "forcible felony" is justified in using or

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<sup>4</sup> R.C. 2901.05(B)(4).

<sup>5</sup> R.C. 2901.09(A) to (C).

threatening to use reasonable force, including deadly force, against the other person to prevent or halt the commission of the forcible felony. The bill defines "forcible felony" as including any of the following felonies:<sup>6</sup>

- Aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, kidnapping, abduction, rape, sexual battery, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, or burglary, when the offense is a felony.
- Any felony offense not listed above that involves the use or threatened use of physical force or violence against any person.

### **Burden of proof and immunity in a tort action**

Under the bill, in a tort action filed against a person related to the person's use or threatened use of force against another, the person has a right to a pretrial immunity hearing regarding a claim of immunity from liability for injury, death, or loss to another based on self-defense, defense of another, or defense of that person's residence. If the person requests such a hearing, the filing of the motion establishes a prima facie claim of self-defense, defense of another, or defense of that person's residence. The court then must hold a pretrial immunity hearing and must grant the motion and hold that the person used or threatened to use the force in self-defense, defense of another, or defense of that person's residence unless the party seeking to overcome the immunity proves beyond a reasonable doubt that the person did not use or threaten to use the force in any of those manners.<sup>7</sup>

For purposes of these provisions, the bill defines "reasonable doubt" and "proof beyond a reasonable doubt" in a manner similar to the ways they currently are defined in criminal law. Under the bill:<sup>8</sup>

- "Reasonable doubt" is present when the court or jury as trier of fact, after it has carefully considered and compared all the evidence, cannot say it is firmly convinced of the truth of the allegation that is the basis of the cause of action. It is a doubt based on reason and common sense. "Reasonable" doubt is not mere possible doubt, because everything relating to human

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<sup>6</sup> R.C. 2901.091.

<sup>7</sup> R.C. 2307.601(C).

<sup>8</sup> R.C. 2307.601(A)(3).

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.

### **No duty to retreat**

For civil and criminal actions, the bill completely eliminates the duty of an individual to retreat before using force in self-defense, defense of another, or defense of the person's residence if the person is in a place that the person lawfully has a right to be. This expands the circumstances in which an individual has no duty to retreat, which applies under current law only to a person lawfully in the person's residence, the person's vehicle, or the vehicle of an immediate family member.

Under the bill, 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, including deadly force. A court or jury as trier of fact must not consider the possibility of retreat as a factor in determining whether a person who used or threatened to use force, including deadly force, reasonably believed that force was necessary to prevent injury, loss, or risk to life or safety. A person may be wrong in estimating the danger or the force necessary to repel the danger as long as there is a reasonable basis for the person's belief and the person acts reasonably in response to that belief.<sup>9</sup>

### **Immunity from criminal prosecution and civil actions, generally**

The bill provides that a person who uses or threatens to use reasonable force, including deadly force, in accordance with the bill's provisions described above, is immune from arrest, detention, the filing of criminal charges, criminal prosecution, or civil action arising from the person's use or threatened use of reasonable force. A law enforcement officer may use standard investigating procedures for investigating the use or threatened use of force, but the officer must not arrest a person for the use or threatened use of force unless the officer has probable cause to believe that the person's use or threatened use of force was not justified under the bill's provisions described above.<sup>10</sup>

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<sup>9</sup> R.C. 2307.601(B)(1) and 2901.09(D) to (F).

<sup>10</sup> R.C. 2307.601(B)(2) and 2901.092(A) and (B).

The court must award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by a defendant in a civil action if the court finds that the defendant is immune from criminal prosecution or civil action for the use or threatened use of reasonable force, as described above.<sup>11</sup>

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## HISTORY

ACTION	DATE
Introduced	04-09-18

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<sup>11</sup> R.C. 2901.092(C).

