

**As Introduced**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**S. B. No. 237**

**Senator Johnson**

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

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**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.

(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:

(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.

(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.

(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:

(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;

(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 282  
another, or defense of that person's residence is not available 283  
in a criminal action to any of the following: 284

(1) A person who uses force during the person's attempted 285  
commission, commission, or escape after the commission or 286  
attempted commission of a felony offense of violence; 287

(2) A person who uses force against another, who is an 288  
aggressor, if the person initially provoked the aggressor to use 289  
force or threat of force against the person, unless either of 290  
the following apply: 291

(a) The use of force or threat of force by the aggressor 292  
is sufficient for the person's reasonable belief that the person 293  
is in imminent danger of death or great bodily harm, and the 294  
person exhausts all reasonable means of escape other than the 295  
use of force or threat of force that is likely to cause death or 296  
great bodily harm to the aggressor. 297

(b) The use of force or threat of force by the aggressor 298  
continues or resumes after the person, in good faith, withdraws 299  
from physical contact and clearly indicates the desire to 300  
withdraw and terminate the use of force or threat of force by 301  
the person or the aggressor. 302

(3) A person who uses force to resist an unlawful arrest, 303  
if the person uses the force against a peace officer and the 304  
person using the force knows the person making the arrest is a 305  
peace officer; 306

(4) A person who uses force to resist a lawful arrest, if 307  
the person uses the force against a person making the arrest or 308  
against a person assisting in making the arrest; 309

(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