

Sub. H. B. No. 228
As Reported by the House
Federalism and Interstate
Relations Committee

Topic: Stand your ground; burden of proof 1

_____ moved to amend as follows:

In line 3 of the title, after "5321.13" insert ", to enact sections 2
2901.091 and 2901.092," 3

In line 8 of the title, delete "to" 4

Delete lines 9 and 10 of the title 5

In line 11 of the title, delete "civil and criminal law;" 6

In line 14 of the title, after ";" insert "to define what 7
constitutes reasonable force and specify when a person is justified in its 8
use or threatened use; to provide that a person has no duty to retreat 9
from any place where the person is lawfully present prior to using or 10
threatening to use reasonable force; to establish civil and criminal 11
immunity for a person who uses or threatens to use reasonable force; to 12
revise the circumstances under which a person who uses or threatens to use 13
deadly force is presumed to be acting in self-defense or defense of 14
another; to establish a procedure and standards for asserting and 15



disproving self-defense, defense of another, or defense of a residence in 16
a criminal or civil case;" 17

In line 37, delete "of the Revised Code"; after "amended" insert 18
"and sections 2901.091 and 2901.092 of the Revised Code be enacted" 19

In line 58, strike through "sell," 20

In line 478, after "(1)" insert "Peace officer has the same 21
meaning as in section 2935.01 of the Revised Code. 22

(2)"; reinsert "'Residence'"; delete "Peace officer" 23

In line 479, reinsert "2901.05"; delete "2935.01" 24

In line 481, strike through "(2)" and insert "(3)" 25

In line 484, after "use" insert "or threatened use"; after "force" 26
insert ", including deadly force," 27

In line 487, strike through "the" and insert "a"; after "person" 28
insert "who is not engaged in illegal activity"; after "retreat" insert 29
"from any place where the person is lawfully present" 30

In line 488, after "using" insert "or threatening to use 31
reasonable"; strike through "in self-defense"; strike through "defense of 32
another, or defense of" 33

In line 489, strike through "that person's residence" 34

In line 493, delete "if that person is in a place in which the" 35

Delete lines 494 through 498 36

In line 499, delete "necessary to prevent injury, loss, or risk to 37
life or safety" and insert "including deadly force, as authorized under 38
section 2901.09 of the Revised Code" 39

In line 500, delete "(D)" and insert "(C)" 40

In line 503, after "uses" insert "or threatens to use"; after 41
"force" insert ", including deadly force," 42

In line 506, after "uses" insert "or threatens to use"; after 43
"force" insert ", including deadly force," 44

In line 508, delete the first "force"; delete "threat of" and insert 45
"threaten to use"; after the second "force" insert ", including deadly 46
force," 47

In line 510, delete "of force"; delete "threat" and insert 48
"threatened use"; after the second "force" insert ", including deadly 49
force," 50

In line 514, delete "of force"; delete "threat" and insert 51
"threatened use"; after the second "force" insert ", including deadly 52
force," 53

In line 516, delete "of force"; delete "threat" and insert 54
"threatened use"; after the second "force" insert ", including deadly 55
force," 56

In line 519, delete the first "of force"; delete "threat" and insert 57
"threatened use"; after the second "force" insert ", including deadly 58
force," 59

Delete lines 521 through 524 60

In line 525, delete "(4)" and insert "(3)"; after "uses" insert "or 61
threatens to use"; after "force" insert ", including deadly force," 62

In line 526, delete the second "the" and insert "or threatens to 63
use"; after "force" insert ", including deadly force," 64

In line 528, delete "(5)" and insert "(4)"; after "uses" insert "or 65
threatens to use"; after "force" insert ", including deadly force," 66

In line 531, delete "(6)" and insert "(5)"; after "uses" insert "or 67
threatens to use"; after "force" insert ", including deadly force," 68

Delete lines 533 through 537 and insert: 69

"(D) Except as provided in division (C) of this section, the 70
immunity from civil action provided in division (A) of section 2901.092 of 71
the Revised Code, and the requirement for an award in a civil action of 72
reasonable attorney's fees, court costs, compensation for loss of income, 73
and expenses incurred that is set forth in division (C) of that section, 74
apply regarding a tort action described in this section. 75

(E) (1) In a tort action filed against a person related to the 76
person's use or threatened use of force, including deadly force, against 77
another, the person has a right to a pretrial immunity hearing, as 78
described in division (E) (2) of this section, regarding a claim of 79
immunity from liability for injury, death, or loss to another based on 80
self-defense, defense of another, or defense of that person's residence. 81

(2) A person who is a defendant in a tort action of the type 82
described in division (E) (1) of this section who would like a pretrial 83
hearing as described in that division shall file a pretrial motion 84
claiming that the person used or threatened to use the force, including 85
deadly force, in self-defense, defense of another, or defense of that 86
person's residence. The filing of the motion establishes a prima facie 87
claim of self-defense, defense of another, or defense of that person's 88
residence. Upon the filing of the motion, the court shall hold a pretrial 89
immunity hearing and shall grant the motion and hold that the person used 90
or threatened to use the force, including deadly force, in self-defense, 91
defense of another, or defense of that person's residence unless the party 92
seeking to overcome the immunity provides substantial evidence that the 93
person did not use or threaten to use the force, including deadly force, 94
in self-defense, defense of another, or defense of that person's 95

<u>residence."</u>	96
In line 538, after "(A)" insert " <u>(1)</u> "	97
After line 546, insert:	98
<u>"(2) A person accused of an offense that involved the</u>	99
<u>person's use or threatened use of force, including deadly force,</u>	100
<u>against another has a right to a pretrial immunity hearing, as</u>	101
<u>described in division (B)(1) of this section, regarding a claim</u>	102
<u>of immunity from criminal prosecution based on self-defense,</u>	103
<u>defense of another, or defense of that person's residence."</u>	104
In line 547, delete " <u>Except as provided in division (D) of section</u> "	105
Delete lines 548 through 559 and insert " <u>A person accused of an</u>	106
<u>offense that involved the person's use or threatened use of force,</u>	107
<u>including deadly force, against another who would like a pretrial hearing</u>	108
<u>as described in division (A)(2) of this section shall file a pretrial</u>	109
<u>motion claiming that the person used or threatened to use the force,</u>	110
<u>including deadly force, in self-defense, defense of another, or defense of</u>	111
<u>that person's residence. The filing of the motion establishes a prima</u>	112
<u>facie claim of self-defense, defense of another, or defense of that</u>	113
<u>person's residence. Upon the filing of the motion, the court shall hold a</u>	114
<u>pretrial immunity hearing and shall grant the motion and hold that the</u>	115
<u>person used or threatened to use the force, including deadly force, in</u>	116
<u>self-defense, defense of another, or defense of that person's residence</u>	117
<u>unless the state proves by clear and convincing evidence that the person</u>	118
<u>did not use or threaten to use the force, including deadly force, in self-</u>	119
<u>defense, defense of another, or defense of that person's residence."</u>	120
In line 562, after "using" insert " <u>or threatening to use</u> "	121
In line 563, after "if" insert " <u>any of</u> "; after "the" insert	122
" <u>following apply:</u>	123

<u>(a) The"</u>	124
In line 564, after "used" insert " <u>or threatened</u> "	125
In line 567, strike through "or" and insert " <u>, occupied</u> ";	126
strike through "occupied by" and insert " <u>, or place of business</u>	127
<u>or employment, of";</u> after "using" insert " <u>or threatening to</u>	128
<u>use";</u> after "force" insert " <u>, or any other place in which the</u>	129
<u>person using or threatening to use the defensive force is</u>	130
<u>lawfully present.</u>	131
<u>(b) The person against whom the defensive force is used or</u>	132
<u>threatened is by force or threat removing or attempting to</u>	133
<u>unlawfully remove another person against the other person's will</u>	134
<u>from any place that the person using or threatening to use the</u>	135
<u>defensive force is lawfully present.</u>	136
<u>(c) The person using or threatening to use the defensive force knows</u>	137
<u>or has reason to believe that any of the conditions set forth in division</u>	138
<u>(B) (2) (a) or (b) of this section are occurring or have occurred"</u>	139
In line 569, delete " <u>either of</u> " and insert " <u>, at</u> "; after "the"	140
insert " <u>time the defensive force is used or threatened, any of the</u> ";	141
delete " <u>is</u> "	142
In line 570, delete " <u>true</u> " and insert " <u>circumstances are present</u> "	143
In line 572, before "has" insert " <u>or threatened</u> "; strike through ",	144
or is a lawful resident of,"; strike through "residence"	145
In line 573, strike through "or vehicle" and insert " <u>place where the</u>	146
<u>person used or threatened to use the defensive force"</u>	147
In line 574, after " <u>forth</u> " insert " <u>person sought to be removed as</u>	148
<u>described</u> "; reinsert "in division (B)"; after " (1) " insert " <u>(2) (b)</u> ";	149
reinsert "of this"	150

In line 575, reinsert "section"; strike through "person who uses the defensive"	151 152
In line 576, strike through "force uses it while" and insert " <u>is a child or grandchild or is otherwise</u> "; strike through "a residence or vehicle and"; strike through "person is"	153 154 155
Strike through line 577	156
In line 578, strike through "vehicle" and insert " <u>lawful custody or under the lawful guardianship of the person against whom the defensive force is used or threatened</u> "	157 158 159
In line 582, delete " <u>proof beyond a reasonable doubt</u> " and insert " <u>by clear and convincing evidence</u> "	160 161
In line 583, delete " <u>divisions (A) and</u> " and insert " <u>division</u> "	162
In line 616, strike through ","	163
In line 617, after " have " insert ":	164
(1)"; delete " <u>peace</u> " and insert " <u>Peace</u> "; after " <u>officer</u> " insert " <u>has the same meaning as in section 2935.01 of the Revised Code.</u> "	165 166 167
(2) " <u>Residence</u> "	168
In line 618, reinsert "2901.05"; delete " <u>2935.01</u> "; after "Code" insert ".	169 170
(3) " <u>Reasonable force</u> " means that 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 safety or the life or safety of another"	171 172 173 174 175
In line 620, strike through the second "a" and insert " <u>the following</u> "	176

<u>apply:</u>	177
(1) A"; reinsert "who"; reinsert "is"; after the reinserted "is"	178
insert " <u>not engaged</u> "; reinsert "in"	179
In line 621, after " <u>residence</u> " insert " <u>illegal activity</u> "; after	180
"retreat" insert " <u>from any place where the person is lawfully present</u> ";	181
after "using" insert " <u>or threatening to use reasonable</u> "; after "force"	182
insert " <u>, including deadly force,</u> "	183
In line 623, reinsert ", "	184
Delete lines 627 and 628	185
In line 629, delete " <u>(C) A</u> " and insert " <u>as authorized under this</u>	186
<u>section.</u>	187
<u>(2) Except as provided in division (C) (2) of this section, a court</u>	188
<u>or jury as"</u>	189
In line 630, delete " <u>or not</u> "	190
In line 631, after " <u>used</u> " insert " <u>or threatened to use</u> "; delete " <u>in</u>	191
<u>self-defense, defense of another, or defense of"</u>	192
In line 632, delete " <u>that person's residence</u> " and insert " <u>,</u>	193
<u>including deadly force,</u> "; delete " <u>the</u> " and insert " <u>such</u> "	194
In line 633, delete " <u>(D)</u> " and insert " <u>(C)</u> "	195
After line 633, insert:	196
<u>"(3) A person is justified in the use of or threat to use</u>	197
<u>reasonable force, including deadly force, when the person</u>	198
<u>reasonably believes that such force is necessary to defend the</u>	199
<u>person or another from any actual or imminent use of unlawful</u>	200
<u>force.</u>	201

<u>(4) A person is justified in the use of or threat to use</u>	202
<u>reasonable force, including deadly force, even if an alternative</u>	203
<u>course of action is available.</u>	204
<u>(5) A person may be wrong in the estimation of the danger</u>	205
<u>or the force necessary to repel the danger as long as there is a</u>	206
<u>reasonable basis for the person's belief and the person acts</u>	207
<u>reasonably in response to that belief."</u>	208
In line 636, delete " <u>tort</u> " and insert " <u>criminal</u> "	209
In line 637, after " <u>uses</u> " insert " <u>or threatens to use</u> "; after	210
" <u>force</u> " insert " <u>, including deadly force,</u> "	211
In line 640, after " <u>uses</u> " insert " <u>or threatens to use</u> "; after	212
" <u>force</u> " insert " <u>, including deadly force,</u> "	213
In line 642, delete the first " <u>force</u> "; delete " <u>threat of</u> " and insert	214
" <u>threaten to use</u> "; after the second " <u>force</u> " insert " <u>, including deadly</u>	215
<u>force,</u> "	216
In line 644, delete the first " <u>of force</u> "; delete " <u>threat</u> " and insert	217
" <u>threatened use</u> "; after the second " <u>force</u> " insert " <u>, including deadly</u>	218
<u>force,</u> "	219
In line 648, delete the first " <u>of force</u> "; delete " <u>threat</u> " and insert	220
" <u>threatened use</u> "; after the second " <u>force</u> " insert " <u>, including deadly</u>	221
<u>force,</u> "	222
In line 650, delete the first " <u>of force</u> "; delete " <u>threat</u> " and insert	223
" <u>threatened use</u> "; after the second " <u>force</u> " insert " <u>, including deadly</u>	224
<u>force,</u> "	225
In line 653, delete the first " <u>of force</u> "; delete " <u>threat</u> " and insert	226
" <u>threatened use</u> "; after the second " <u>force</u> " insert " <u>, including deadly</u>	227
<u>force,</u> "	228

Delete lines 655 through 658	229
In line 659, delete " <u>(4)</u> " and insert " <u>(3)</u> "; after " <u>uses</u> " insert " <u>or</u> <u>threatens to use</u> "; after " <u>force</u> " insert " <u>, including deadly force,</u> "	230 231
In line 660, delete the second " <u>the</u> " and insert " <u>or threatens to</u> <u>use</u> "; after " <u>force</u> " insert " <u>, including deadly force,</u> "	232 233
In line 662, delete " <u>(5)</u> " and insert " <u>(4)</u> "; after " <u>uses</u> " insert " <u>or</u> <u>threatens to use</u> "; after " <u>force</u> " insert " <u>, including deadly force,</u> "	234 235
In line 665, delete " <u>(6)</u> " and insert " <u>(5)</u> "; after " <u>uses</u> " insert " <u>or</u> <u>threatens to use</u> "; after " <u>force</u> " insert " <u>, including deadly force,</u> "	236 237
Delete lines 667 through 671 and insert:	238
<u>"Sec. 2901.091. (A) As used in this section, "forcible</u> <u>felony" means any of the following:</u>	239 240
<u>(1) A felony violation of section 2903.01, 2903.02,</u> <u>2903.03, 2903.04, 2903.11, 2903.12, 2905.01, 2905.02, 2907.02,</u> <u>2907.03, 2909.02, 2909.03, 2911.01, 2911.02, 2911.11, or 2911.12</u> <u>of the Revised Code;</u>	241 242 243 244
<u>(2) Any felony offense not identified in division (A)(1)</u> <u>of this section that involves the use or threatened use of</u> <u>physical force or violence against any individual.</u>	245 246 247
<u>(B) A person who reasonably believes that another person</u> <u>is committing or is about to commit a forcible felony is</u> <u>justified in using or threatening to use reasonable force,</u> <u>including deadly force, against the other person to prevent or</u> <u>halt the commission of the forcible felony.</u>	248 249 250 251 252
<u>Sec. 2901.092. (A) A person who uses or threatens to use</u> <u>reasonable force, including deadly force, in accordance with</u>	253 254

section 2901.09 or 2901.091 of the Revised Code shall be immune 255
from arrest, detention, the filing of criminal charges, criminal 256
prosecution, or civil action arising from the person's use or 257
threatened use of the reasonable force, including deadly force. 258

(B) A law enforcement officer may use standard 259
investigating procedures for investigating the use or threatened 260
use of force, including deadly force, but the law enforcement 261
officer shall not arrest a person for the person's use or 262
threatened use of force, including deadly force, unless the law 263
enforcement officer has probable cause to believe that the 264
person's use or threatened use of force, including deadly force, 265
was not justified under section 2901.09 or 2901.091 of the 266
Revised Code. 267

(C) The court shall award reasonable attorney's fees, 268
court costs, compensation for loss of income, and all expenses 269
incurred by the defendant in defense of any civil action brought 270
by a plaintiff if the court finds that the defendant is immune 271
from criminal prosecution or civil action as provided in 272
division (A) of this section." 273

The motion was _____ agreed to.