

Am. Sub. H.B. 228  
As Passed by the House

**Topic:** Stand your ground; burden of proof

\_\_\_\_\_ moved to amend as follows:

- In line 3 of the title, after "5321.13" insert ", to enact sections 2901.091 and 2901.092," 1 2
- In line 8 of the title, delete "to" 3
- Delete lines 9 and 10 of the title 4
- In line 11 of the title, delete "civil and criminal law;" 5
- In line 14 of the title, after ";" insert "to define what constitutes reasonable force and specify when a person is justified in its use or threatened use; to provide that a person has no duty to retreat from any place where the person is lawfully present prior to using or threatening to use reasonable force; to establish civil and criminal immunity for a person who uses or threatens to use reasonable force; to revise the circumstances under which a person who uses or threatens to use deadly force is presumed to be acting in self-defense or defense of another; to establish a procedure and standards for asserting and disproving self-defense, defense of another, or defense of a residence in a criminal or civil case;" 6 7 8 9 10 11 12 13 14 15 16 17
- In line 37, delete "of the Revised Code"; after "amended" insert "and sections 2901.091 and 2901.092 of the Revised Code be enacted" 18 19 20

In line 478, after "(1)" insert " <u>Peace officer</u> " has the same	21
<u>meaning as in section 2935.01 of the Revised Code.</u>	22
<u>(2)</u> "; reinsert "Residence"; delete " <u>Peace officer</u> "	23
In line 479, reinsert "2901.05"; delete " <u>2935.01</u> "	24
In line 481, strike through "(2)" and insert " <u>(3)</u> "	25
In line 484, after "use" insert " <u>or threatened use</u> "; after	26
"force" insert " <u>, including deadly force,</u> "	27
In line 487, strike through "the" and insert " <u>a</u> "; after	28
"person" insert " <u>who is not engaged in illegal activity</u> "; after	29
"retreat" insert " <u>from any place where the person is lawfully</u>	30
<u>present</u> "	31
In line 488, after "using" insert " <u>or threatening to use</u>	32
<u>reasonable</u> "; strike through "in self-defense"; strike through	33
"defense of another, or defense of"	34
In line 489, strike through "that person's residence"	35
In line 493, delete " <u>if that person is in a place in which</u>	36
<u>the</u> "	37
Delete lines 494 through 498	38
In line 499, delete " <u>necessary to prevent injury, loss, or</u>	39
<u>risk to life or safety</u> " and insert " <u>including deadly force, as</u>	40
<u>authorized under section 2901.09 of the Revised Code</u> "	41
In line 500, delete " <u>(D)</u> " and insert " <u>(C)</u> "	42
In line 503, after " <u>uses</u> " insert " <u>or threatens to use</u> "; after	43
" <u>force</u> " insert " <u>, including deadly force,</u> "	44
In line 506, after " <u>uses</u> " insert " <u>or threatens to use</u> "; after	45
" <u>force</u> " insert " <u>, including deadly force,</u> "	46
In line 508, delete the first " <u>force</u> "; delete " <u>threat of</u> " and	47

insert "threaten to use"; after the second "force" insert ", including deadly force." 48  
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In line 510, delete "of force"; delete "threat" and insert "threatened use"; after the second "force" insert ", including deadly force." 50  
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In line 514, delete "of force"; delete "threat" and insert "threatened use"; after the second "force" insert ", including deadly force." 53  
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In line 516, delete "of force"; delete "threat" and insert "threatened use"; after the second "force" insert ", including deadly force." 56  
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In line 519, delete the first "of force"; delete "threat" and insert "threatened use"; after the second "force" insert ", including deadly force." 59  
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Delete lines 521 through 524 62

In line 525, delete "(4)" and insert "(3)"; after "uses" insert "or threatens to use"; after "force" insert ", including deadly force." 63  
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In line 526, delete the second "the" and insert "or threatens to use"; after "force" insert ", including deadly force." 66  
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In line 528, delete "(5)" and insert "(4)"; after "uses" insert "or threatens to use"; after "force" insert ", including deadly force." 68  
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In line 531, delete "(6)" and insert "(5)"; after "uses" insert "or threatens to use"; after "force" insert ", including deadly force." 71  
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Delete lines 533 through 537 and insert: 74

"(D) Except as provided in division (C) of this section, the" 75

immunity from civil action provided in division (A) of section 76  
2901.092 of the Revised Code, and the requirement for an award in 77  
a civil action of reasonable attorney's fees, court costs, 78  
compensation for loss of income, and expenses incurred that is set 79  
forth in division (C) of that section, apply regarding a tort 80  
action described in this section. 81

(E)(1) In a tort action filed against a person related to the 82  
person's use or threatened use of force, including deadly force, 83  
against another, the person has a right to a pretrial immunity 84  
hearing, as described in division (E)(2) of this section, 85  
regarding a claim of immunity from liability for injury, death, or 86  
loss to another based on self-defense, defense of another, or 87  
defense of that person's residence. 88

(2) A person who is a defendant in a tort action of the type 89  
described in division (E)(1) of this section who would like a 90  
pretrial hearing as described in that division shall file a 91  
pretrial motion claiming that the person used or threatened to use 92  
the force, including deadly force, in self-defense, defense of 93  
another, or defense of that person's residence. The filing of the 94  
motion establishes a prima facie claim of self-defense, defense of 95  
another, or defense of that person's residence. Upon the filing of 96  
the motion, the court shall hold a pretrial immunity hearing and 97  
shall grant the motion and hold that the person used or threatened 98  
to use the force, including deadly force, in self-defense, defense 99  
of another, or defense of that person's residence unless the party 100  
seeking to overcome the immunity provides substantial evidence 101  
that the person did not use or threaten to use the force, 102  
including deadly force, in self-defense, defense of another, or 103  
defense of that person's residence." 104

In line 538, after "(A)" insert "(1)" 105

After line 546, insert: 106

"(2) A person accused of an offense that involved the 107  
person's use or threatened use of force, including deadly force, 108  
against another has a right to a pretrial immunity hearing, as 109  
described in division (B)(1) of this section, regarding a claim of 110  
immunity from criminal prosecution based on self-defense, defense 111  
of another, or defense of that person's residence." 112

In line 547, delete "Except as provided in division (D) of 113  
section" 114

Delete lines 548 through 559 and insert "A person accused of 115  
an offense that involved the person's use or threatened use of 116  
force, including deadly force, against another who would like a 117  
pretrial hearing as described in division (A)(2) of this section 118  
shall file a pretrial motion claiming that the person used or 119  
threatened to use the force, including deadly force, in 120  
self-defense, defense of another, or defense of that person's 121  
residence. The filing of the motion establishes a prima facie 122  
claim of self-defense, defense of another, or defense of that 123  
person's residence. Upon the filing of the motion, the court shall 124  
hold a pretrial immunity hearing and shall grant the motion and 125  
hold that the person used or threatened to use the force, 126  
including deadly force, in self-defense, defense of another, or 127  
defense of that person's residence unless the state proves by 128  
clear and convincing evidence that the person did not use or 129  
threaten to use the force, including deadly force, in 130  
self-defense, defense of another, or defense of that person's 131  
residence." 132

In line 562, after "using" insert "or threatening to use" 133

In line 563, after "if" insert "any of"; after "the" insert 134  
"following apply: 135

<u>(a) The</u>	136
In line 564, after "used" insert " <u>or threatened</u> "	137
In line 567, strike through "or" and insert " <u>, occupied</u> ";	138
strike through "occupied by" and insert " <u>, or place of business or</u>	139
<u>employment, of</u> "; after "using" insert " <u>or threatening to use</u> ";	140
after "force" insert " <u>, or any other place in which the person</u>	141
<u>using or threatening to use the defensive force is lawfully</u>	142
<u>present.</u>	143
<u>(b) The person against whom the defensive force is used or</u>	144
<u>threatened is by force or threat removing or attempting to</u>	145
<u>unlawfully remove another person against the other person's will</u>	146
<u>from any place that the person using or threatening to use the</u>	147
<u>defensive force is lawfully present.</u>	148
<u>(c) The person using or threatening to use the defensive</u>	149
<u>force knows or has reason to believe that any of the conditions</u>	150
<u>set forth in division (B)(2)(a) or (b) of this section are</u>	151
<u>occurring or have occurred</u> "	152
In line 569, delete " <u>either of</u> " and insert " <u>, at</u> "; after	153
"the" insert " <u>time the defensive force is used or threatened, any</u>	154
<u>of the</u> "; delete " <u>is</u> "	155
In line 570, delete " <u>true</u> " and insert " <u>circumstances are</u>	156
<u>present</u> "	157
In line 572, before "has" insert " <u>or threatened</u> "; strike	158
through " <u>, or is a lawful resident of,</u> "; strike through	159
" <u>residence</u> "	160
In line 573, strike through "or vehicle" and insert " <u>place</u>	161
<u>where the person used or threatened to use the defensive force</u> "	162
In line 574, after " <u>forth</u> " insert " <u>person sought to be</u>	163

<u>removed as described</u> "; reinsert "in division (B)"; after " <del>(1)</del> "	164
insert " <u>(2)(b)</u> "; reinsert "of this"	165
In line 575, reinsert "section"; strike through "person who uses the defensive"	166 167
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"	168 169 170
Strike through line 577	171
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> "	172 173 174
In line 582, delete " <u>proof beyond a reasonable doubt</u> " and insert " <u>by clear and convincing evidence</u> "	175 176
In line 583, delete " <u>divisions (A) and</u> " and insert " <u>division</u> "	177
In line 616, strike through ", "	178
In line 617, after " <del>have</del> " insert ":	179
<u>(1)</u> "; delete " <u>peace</u> " and insert " <u>Peace</u> "; after " <u>officer</u> "	180
insert " <u>has the same meaning as in section 2935.01 of the Revised Code.</u> "	181 182
<u>(2) "Residence"</u>	183
In line 618, reinsert "2901.05"; delete " <u>2935.01</u> "; after "Code" insert ".	184 185
<u>(3) "Reasonable force" means the use or threatened use of 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"</u>	186 187 188 189 190 191

In line 620, strike through the second "a" and insert " <u>the</u>	192
<u>following apply:</u>	193
(1) <u>A</u> "; reinsert "who"; reinsert "is"; after the reinserted	194
"is" insert " <u>not engaged</u> "; reinsert "in"	195
In line 621, after " <del>residence</del> " insert " <u>illegal activity</u> ";	196
after "retreat" insert " <u>from any place where the person is</u>	197
<u>lawfully present</u> "; after "using" insert " <u>or threatening to use</u>	198
<u>reasonable</u> "; after "force" insert " <u>, including deadly force,</u> "	199
In line 623, reinsert ", "	200
Delete lines 627 and 628	201
In line 629, delete " <u>(C) A</u> " and insert " <u>as authorized under</u>	202
<u>this section.</u>	203
(2) <u>Except as provided in division (C)(2) of this section, a</u>	204
<u>court or jury as</u> "	205
In line 630, delete " <u>or not</u> "	206
In line 631, after " <u>used</u> " insert " <u>or threatened to use</u> ";	207
delete " <u>in self-defense, defense of another, or defense of</u> "	208
In line 632, delete " <u>that person's residence</u> " and insert " <u>,</u>	209
<u>including deadly force,</u> "; delete " <u>the</u> " and insert " <u>such</u> "	210
After line 633, insert:	211
"(3) <u>A person is justified in the use of or threat to use</u>	212
<u>reasonable force, including deadly force, when the person</u>	213
<u>reasonably believes that such force is necessary to defend the</u>	214
<u>person or another from any actual or imminent use of unlawful</u>	215
<u>force.</u>	216
(4) <u>A person is justified in the use of or threat to use</u>	217
<u>reasonable force, including deadly force, even if an alternative</u>	218



<u>course of action is available.</u>	219
<u>(5) A person may be wrong in the estimation of the danger or</u>	220
<u>the force necessary to repel the danger as long as there is a</u>	221
<u>reasonable basis for the person's belief and the person acts</u>	222
<u>reasonably in response to that belief."</u>	223
In line 634, delete "(D)" and insert "(C)"	224
In line 636, delete "tort" and insert "criminal"	225
In line 637, after "uses" insert "or threatens to use"; after	226
"force" insert ", including deadly force,"	227
In line 640, after "uses" insert "or threatens to use"; after	228
"force" insert ", including deadly force,"	229
In line 642, delete the first "force"; delete "threat of" and	230
insert "threaten to use"; after the second "force" insert ",	231
including deadly force,"	232
In line 644, delete the first "of force"; delete "threat" and	233
insert "threatened use"; after the second "force" insert ",	234
including deadly force,"	235
In line 648, delete the first "of force"; delete "threat" and	236
insert "threatened use"; after the second "force" insert ",	237
including deadly force,"	238
In line 650, delete the first "of force"; delete "threat" and	239
insert "threatened use"; after the second "force" insert ",	240
including deadly force,"	241
In line 653, delete the first "of force"; delete "threat" and	242
insert "threatened use"; after the second "force" insert ",	243
including deadly force,"	244
Delete lines 655 through 658	245

In line 659, delete " <u>(4)</u> " and insert " <u>(3)</u> "; after " <u>uses</u> "	246
insert " <u>or threatens to use</u> "; after " <u>force</u> " insert " <u>, including</u>	247
<u>deadly force.</u> "	248
In line 660, delete the second " <u>the</u> " and insert " <u>or threatens</u>	249
<u>to use</u> "; after " <u>force</u> " insert " <u>, including deadly force.</u> "	250
In line 662, delete " <u>(5)</u> " and insert " <u>(4)</u> "; after " <u>uses</u> "	251
insert " <u>or threatens to use</u> "; after " <u>force</u> " insert " <u>, including</u>	252
<u>deadly force.</u> "	253
In line 665, delete " <u>(6)</u> " and insert " <u>(5)</u> "; after " <u>uses</u> "	254
insert " <u>or threatens to use</u> "; after " <u>force</u> " insert " <u>, including</u>	255
<u>deadly force.</u> "	256
Delete lines 667 through 671 and insert:	257
" <u>Sec. 2901.091. (A) As used in this section, "forcible</u>	258
<u>felony</u> " means any of the following:	259
<u>(1) A felony violation of section 2903.01, 2903.02, 2903.03,</u>	260
<u>2903.04, 2903.11, 2903.12, 2905.01, 2905.02, 2907.02, 2907.03,</u>	261
<u>2909.02, 2909.03, 2911.01, 2911.02, 2911.11, or 2911.12 of the</u>	262
<u>Revised Code;</u>	263
<u>(2) Any felony offense not identified in division (A)(1) of</u>	264
<u>this section that involves the use or threatened use of physical</u>	265
<u>force or violence against any individual.</u>	266
<u>(B) A person who reasonably believes that another person is</u>	267
<u>committing or is about to commit a forcible felony and who uses or</u>	268
<u>threatens to use reasonable force, including deadly force, as</u>	269
<u>authorized under section 2901.09 of the Revised Code, is justified</u>	270
<u>in using or threatening to use reasonable force, including deadly</u>	271
<u>force, against the other person to prevent or halt the commission</u>	272
<u>of the forcible felony.</u>	273

Sec. 2901.092. (A) A person who uses or threatens to use 274  
reasonable force, including deadly force, in accordance with 275  
section 2901.09 or 2901.091 of the Revised Code shall be immune 276  
from arrest, the filing of criminal charges, criminal prosecution, 277  
or civil action arising from the person's use or threatened use of 278  
the reasonable force, including deadly force. 279

(B) A law enforcement officer may use standard investigating 280  
procedures for investigating the use or threatened use of force, 281  
including deadly force, but the law enforcement officer shall not 282  
arrest a person for the person's use or threatened use of force, 283  
including deadly force, unless the law enforcement officer has 284  
probable cause to believe that the person's use or threatened use 285  
of force, including deadly force, was not justified under section 286  
2901.09 or 2901.091 of the Revised Code. 287

(C) The court shall award reasonable attorney's fees, court 288  
costs, compensation for loss of income, and all expenses incurred 289  
by the defendant in defense of any civil action brought by a 290  
plaintiff if the court finds that the defendant is immune from 291  
criminal prosecution or civil action as provided in division (A) 292  
of this section." 293

The motion was \_\_\_\_\_ agreed to.