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Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Johnson

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SUMMARY

- Provides that a person who is not engaged in illegal activity has no duty to retreat from a place the person is lawfully present before using or threatening to use reasonable force, including deadly force, in self-defense, defense of another, or defense of that person's residence.
- Establishes that a person is justified in using or threatening to use reasonable force, including deadly force, in the following situations:
 - 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;
 - When the person reasonably believes that such force is necessary to prevent or halt the commission of a forcible felony;
 - Even when an alternative course of action is available.
- Expands the circumstances in which a person is presumed to have acted in self-defense or defense of another to include the following:
 - The person against whom the deadly force is used or threatened is unlawfully entering the business of the person using or threatening to use deadly force or any place 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 another person against the other person's will from a place the person using or threatening to use deadly force is lawfully present;
 - The person using or threatening to use deadly force knows or has reason to believe that the conditions in the preceding dot points have occurred.
- Expands the exceptions to the presumption of self-defense or defense of another to include the following:

- The person against whom the 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;
- The person being removed against that person's will, as described in the dot point above, is in the lawful custody or guardianship of the person against whom the deadly force is used or threatened;
- The person using or threatening to use deadly force is committing a criminal offense;
- The person against whom deadly force is used is a law enforcement officer.
- Provides that self-defense, defense of another, or defense of that person's residence is not available to any of the following:
 - A person who uses force during the commission of a felony offense of violence;
 - A person who uses force against another (aggressor) if the person initially provoked the aggressor to use force or the threat of force against the person in specified circumstances;
 - A person who uses force to resist an unlawful arrest, if the person uses force against a peace officer;
 - A person who uses force to resist a lawful arrest, if the person uses force against the person making or assisting in the arrest;
 - A person who uses force against a peace officer or person assisting a peace officer, if the peace officer is acting in the performance of the peace officer's official duties;
 - A person who uses force while under a weapons disability.
- Grants immunity to a person who is justified in using or threatening to use reasonable force, including deadly force.
- Establishes procedures for a pretrial immunity hearing.
- Names the act's provisions the Ohio Duty to Retreat Act.

DETAILED ANALYSIS

Duty to retreat

For purposes of a tort action or criminal offense, the bill expands the circumstances in which a person has no duty to retreat. The bill provides that 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, in self-defense, defense of

another, or defense of that person's residence.¹ The bill defines "reasonable force" as 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.²

Under current law, a person who is lawfully in that person's residence has no duty to retreat before using self-defense, defense of another, or defense of that person's residence and a person who is lawfully an occupant of that person's vehicle or who is lawfully the occupant of a vehicle owned by an immediate family member of the person has no duty to retreat before using force in self-defense or defense of another.³

The bill provides that a trier of fact must 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.⁴

Justifications for using reasonable force

For purposes of a tort action or criminal offense, the bill establishes when a person is justified in using reasonable force. The bill provides that a person is justified in using or threatening to use reasonable force, including deadly force, in all of the following situations:

--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;

--When the person reasonably believes that another person is committing or about to commit a forcible felony and that such force is necessary to prevent or halt the commission of the forcible felony (the bill defines "forcible felony" as any of the following felonies: 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 or any other felony offense that involves the use or threatened use of physical force or violence against any person);

--Even when an alternative course of action is available.

A person may be wrong in the estimation of 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.⁵

¹ R.C. 2307.601(B)(1) and 2901.09(B)(1).

² R.C. 2307.601(A)(4) and 2901.09(A)(2).

³ R.C. 2307.601(B) and 2901.09(B).

⁴ R.C. 2307.601(B)(2) and 2901.09(B)(2).

⁵ R.C. 2307.601(B)(1), 2901.09(B)(3) to (5), and 2901.091.

Presumption of self-defense

For purposes of a criminal offense, the bill expands the circumstances in which a person is presumed to have acted in self-defense or defense of another. The bill provides that a person is presumed to have acted in self-defense or defense of another when using or threatening to use deadly force that is intended or likely to cause death or great bodily harm to another if any of the following apply:

--The person against whom the deadly force is used or threatened unlawfully and without privilege to do so is entering or has entered the place of business or employment of the person using or threatening to use deadly force, or 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.

Under current law, a person is presumed 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 to another if the person against whom the defensive force is used is in the process of unlawfully and without privilege to do so entering, or has unlawfully and without privilege to do so entered, the residence or vehicle occupied by the person using the defensive force.⁶

The bill retains current law provisions which specify that the presumption is a rebuttable presumption and may be rebutted by a preponderance of the evidence.⁷

Exceptions to the presumption of self-defense

For purposes of a criminal offense, the bill expands the exceptions to the presumption of self-defense or defense of another. The bill provides that the presumption of self-defense or defense of another does not apply if, at the time the deadly force is used or threatened, any of the following circumstances are present:⁸

--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;

--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;

⁶ R.C. 2901.05(B)(2).

⁷ R.C. 2901.05(B)(4).

⁸ R.C. 2901.05(B)(3).

--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 himself 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.

Under current law, the presumption of self-defense or defense of another does not apply if either of the following is true:

--The person against whom the defensive force is used has a right to be in, or is a lawful resident of, the residence or the vehicle;

--The person who uses 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.

Limitations on self-defense

For purposes of a tort action or criminal offense, the bill limits the circumstances in which a person may use self-defense, defense of another, or defense of that person's residence. The bill provides that self-defense, defense of another, or defense of that person's residence is not available to any of the following:⁹

--A person who uses force during the person's attempted commission, commission, or escape after commission or attempted commission of a felony offense of violence;

--A person who uses force against another, who is an aggressor, if the person initially provoked the aggressor to use force or threat of force against the person, unless either of the following apply:

- The aggressor's use of force or threat of force is sufficient for the person's reasonable belief that the person is in imminent danger of death or great bodily harm, and the person exhausts all reasonable means of escape other than the use of force or threat of force that is likely to cause death or great bodily harm to the aggressor.
- The aggressor's use of force or threat of force continues or resumes after the person, in good faith, withdraws from physical contact and clearly indicates the desire to withdraw and terminate the use of force or threat of force by the person or the aggressor.

⁹ R.C. 2307.601(C) and 2901.09(C).

--A person who uses force to resist an unlawful arrest, if the person uses the force against a peace officer and the person using the force knows the person making the arrest is a peace officer;

--A person who uses force to resist a lawful arrest, if the person uses the force against a person making the arrest or against a person assisting in making the arrest;

--A person who uses force against a peace officer, or a person assisting a peace officer, if the peace officer is acting in the performance of the peace officer's official duties;

--A person who uses force while under a weapons disability.

The fact that an affirmative defense is not available to a person does not affect the person's right to bring any affirmative defense available to the person under the common law of this state prior to the effective date of the bill.¹⁰

Immunity

For purposes of a tort or criminal offense, the bill grants immunity to a person who is justified in using or threatening to use reasonable force, including deadly force. The bill provides that a person who uses or threatens to use reasonable force, including deadly force, in accordance with the bill's provisions (see, "**Justifications for using reasonable force,**" above) is immune from arrest, the filing of criminal charges, criminal prosecution, or civil action arising from the person's use or threatened use of reasonable force, including deadly force. 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.

For purposes of a criminal offense, a law enforcement officer may use standard investigating procedures for investigating the use or threatened use of force, including deadly 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 (see, "**Justifications for using reasonable force,**" above).¹¹

Pretrial immunity hearing

The bill establishes procedures for a pretrial immunity hearing.

Right to a pretrial immunity hearing

In a tort action or criminal case, the bill provides that a person has a right to a pretrial immunity hearing. In a tort action filed against a person related to the person's use or threatened use of force, including deadly force, against another, the person has a right to a

¹⁰ R.C. 2307.601(D) and 2901.09(D).

¹¹ R.C. 2307.601(E) and 2901.092.

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.

In a criminal case filed against a person accused of an offense that involved the person's use or threatened use of force, including deadly force, the person has a right to a pretrial immunity hearing regarding a claim of immunity from criminal prosecution based on self-defense, defense of another, or defense of that person's residence.¹²

Pretrial motion

In a tort action or criminal case, the bill provides that a person who would like a pretrial hearing must file a pretrial motion claiming that the person used or threatened to use the force, including deadly force, in self-defense, defense of another, or defense of that person's residence. The filing of the motion establishes a prima facie claim of self-defense, defense of another, or defense of that person's residence.¹³

Pretrial immunity hearing

In a tort action or criminal case, the bill provides that upon the filing of the motion, the court then must hold a pretrial immunity hearing. In a tort action, the court must grant the motion and hold that the person used or threatened to use the force, including deadly force, in self-defense, defense of another, or defense of that person's residence unless the party seeking to overcome the immunity provides substantial evidence that the person did not use or threaten to use the force, including deadly force, in self-defense, defense of another, or defense of that person's residence.

In a criminal case, the court must grant the motion and hold that the person used or threatened to use the force, including deadly force, in self-defense, defense of another, or defense of that person's residence unless the state proves by clear and convincing evidence that the person did not use or threaten to use the force, including deadly force, in self-defense, defense of another, or defense of that person's residence. Under existing law, the state's burden of proof is proof beyond a reasonable doubt.¹⁴

Ohio Duty to Retreat Act

The bill names all of its provisions described above the Ohio Duty to Retreat Act.¹⁵

¹² R.C. 2307.601(F)(1) and 2901.05(A)(2).

¹³ R.C. 2307.601(F)(2) and 2901.05(B)(1).

¹⁴ R.C. 2307.601(F)(2) and 2901.05(B)(1) and (4).

¹⁵ Section 3.

HISTORY

Action	Date
Introduced	11-12-19
