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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
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Office

H.B. 38  
134<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. West and A. Miller

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### SUMMARY

- Limits the locations where a person has no duty to retreat before using force in self-defense, defense of another, or defense of that person's residence.
- Removes the prohibition against a trier of fact considering the possibility of retreat when determining self-defense.

### DETAILED ANALYSIS

#### Duty to retreat

For purposes of a tort action or a criminal offense, the bill limits the locations in which a person does not have a duty to retreat before using force in self-defense, defense of another, or defense of that person's residence. Under the bill, a person has no duty to retreat before using force in self-defense, defense of another, or defense of that person's residence, if the person lawfully is in 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. Under existing law, a person has no duty to retreat before using force in self-defense, defense of another, or defense of that person's residence if that person is in a place in which the person lawfully has a right to be.<sup>1</sup>

The bill also removes a prohibition against a trier of fact considering the possibility of retreat as a factor in determining whether or not a person who used force in self-defense,

<sup>1</sup> R.C. 2307.601(B) and 2901.09(B).

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.<sup>2</sup>

### **Burden of proof**

Continuing law specifies that if, at the trial of a person who is accused of an offense that involved the person’s use of force against another, there is evidence presented that tends to support that the accused used the force in self-defense, defense of another, or defense of the person’s residence, the prosecution must prove beyond a reasonable doubt that the accused person did not use the force in self-defense, defense of another, or defense of that person’s residence. The bill removes a clarification that that burden of proof referred to is the burden of proof “presented” in R.C. 2901.05(B)(1).<sup>3</sup>

### **Effect of the bill**

Overall, the changes made by the bill reinstate the law as it was prior to the enactment of Am. S.B. 175 of the 133<sup>rd</sup> General Assembly, which went into effect on April 6, 2021.

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## **HISTORY**

Action	Date
Introduced	02-03-21

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<sup>2</sup> R.C. 2307.601(C) and 2901.09(C).

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