

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2231 Session of
2005

INTRODUCED BY CAPPELLI, FEESE, DeLUCA, ARMSTRONG, BAKER, BARRAR, BENNINGHOFF, BOYD, BUNT, CRAHALLA, DALLY, FAIRCHILD, FLEAGLE, GEIST, GINGRICH, GODSHALL, HARPER, HARRIS, HERMAN, KAUFFMAN, W. KELLER, KOTIK, LEDERER, LEH, METCALFE, MUNDY, MUSTIO, PAYNE, REED, ROHRER, SATHER, SCHRODER, SEMMEL, S. H. SMITH, E. Z. TAYLOR, J. TAYLOR, TIGUE, WILT AND BELFANTI, NOVEMBER 15, 2005

REFERRED TO COMMITTEE ON JUDICIARY, NOVEMBER 15, 2005

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, further providing, in general principles of
4 justification, for definitions, for use of force in self-
5 protection and for use of force for the protection of other
6 persons; and providing for civil immunity for use of force.

7 The General Assembly finds that:

8 (1) It is proper for law-abiding people to protect
9 themselves, their families and others from intruders and
10 attackers without fear of prosecution or civil action for
11 acting in defense of themselves and others.

12 (2) The castle doctrine is a common law doctrine of
13 ancient origins which declares that a home is a person's
14 castle.

15 (3) Section 21 of Article I of the Constitution of
16 Pennsylvania guarantees that the "right of the citizens to
17 bear arms in defense of themselves and the State shall not be

1 questioned."

2 (4) Persons residing in or visiting this Commonwealth
3 have a right to expect to remain unmolested within their
4 homes or vehicles.

5 (5) No person should be required to surrender his or her
6 personal safety to a criminal, nor should a person be
7 required to needlessly retreat in the face of intrusion or
8 attack outside the person's home or vehicle.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Sections 501, 505(b) and 506 of Title 18 of the
12 Pennsylvania Consolidated Statutes are amended to read:

13 § 501. Definitions.

14 Subject to additional definitions contained in subsequent
15 provisions of this chapter which are applicable to specific
16 provisions of this chapter, the following words and phrases,
17 when used in this chapter shall have, unless the context clearly
18 indicates otherwise, the meanings given to them in this section:

19 "Believes" or "belief." Means "reasonably believes" or
20 "reasonable belief."

21 "Correctional institution." Any penal institution,
22 penitentiary, State farm, reformatory, prison, jail, house of
23 correction, or other institution for the incarceration or
24 custody of persons under sentence for offenses or awaiting trial
25 or sentence for offenses.

26 "Deadly force." Force which, under the circumstances in
27 which it is used, is readily capable of causing death or serious
28 bodily injury.

29 "Dwelling." Any building or structure, including any
30 attached porch, deck or patio, though movable or temporary, or a

1 portion thereof, which is for the time being the home or place
2 of lodging of the actor.

3 "Peace officer." Any person who by virtue of his office or
4 public employment is vested by law with a duty to maintain
5 public order or to make arrests for offenses, whether that duty
6 extends to all offenses or is limited to specific offenses, or
7 any person on active State duty pursuant to [section 311 of the
8 act of May 27, 1949 (P.L.1903, No.568), known as "The Military
9 Code of 1949."] 51 Pa.C.S. § 508 (relating to active State duty
10 for emergency). The term "peace officer" shall also include any
11 member of any park police department of any county of the third
12 class.

13 "Residence." A dwelling in which a person resides, either
14 temporarily or permanently, or visits as an invited guest.

15 "Unlawful force." Force, including confinement, which is
16 employed without the consent of the person against whom it is
17 directed and the employment of which constitutes an offense or
18 actionable tort or would constitute such offense or tort except
19 for a defense (such as the absence of intent, negligence, or
20 mental capacity; duress; youth; or diplomatic status) not
21 amounting to a privilege to use the force. Assent constitutes
22 consent, within the meaning of this section, whether or not it
23 otherwise is legally effective, except assent to the infliction
24 of death or serious bodily injury.

25 "Vehicle." A conveyance of any kind, whether or not
26 motorized, which is designed to transport people or property.

27 § 505. Use of force in self-protection.

28 * * *

29 (b) Limitations on justifying necessity for use of force.--

30 (1) The use of force is not justifiable under this

1 section:

2 (i) to resist an arrest which the actor knows is
3 being made by a peace officer, although the arrest is
4 unlawful; or

5 (ii) to resist force used by the occupier or
6 possessor of property or by another person on his behalf,
7 where the actor knows that the person using the force is
8 doing so under a claim of right to protect the property,
9 except that this limitation shall not apply if:

10 (A) the actor is a public officer acting in the
11 performance of his duties or a person lawfully
12 assisting him therein or a person making or assisting
13 in a lawful arrest;

14 (B) the actor has been unlawfully dispossessed
15 of the property and is making a reentry or recaption
16 justified by section 507 of this title (relating to
17 use of force for the protection of property); or

18 (C) the actor believes that such force is
19 necessary to protect himself against death or serious
20 bodily injury.

21 (2) The use of deadly force is not justifiable under
22 this section unless the actor believes that such force is
23 necessary to protect himself against death, serious bodily
24 injury, kidnapping or sexual intercourse compelled by force
25 or threat; nor is it justifiable if[:

26 (i)] the actor, with the intent of causing death or
27 serious bodily injury, provoked the use of force against
28 himself in the same encounter.]; or

29 (ii) the actor knows that he can avoid the necessity
30 of using such force with complete safety by retreating or

1 by surrendering possession of a thing to a person
2 asserting a claim of right thereto or by complying with a
3 demand that he abstain from any action which he has no
4 duty to take, except that:

5 (A) the actor is not obliged to retreat from his
6 dwelling or place of work, unless he was the initial
7 aggressor or is assailed in his place of work by
8 another person whose place of work the actor knows it
9 to be; and

10 (B) a public officer justified in using force in
11 the performance of his duties or a person justified
12 in using force in his assistance or a person
13 justified in using force in making an arrest or
14 preventing an escape is not obliged to desist from
15 efforts to perform such duty, effect such arrest or
16 prevent such escape because of resistance or
17 threatened resistance by or on behalf of the person
18 against whom such action is directed.]

19 (2.1) Except as otherwise provided in paragraph (2.2),
20 an actor is presumed to have a reasonable belief that deadly
21 force is immediately necessary to protect himself against
22 death, serious bodily injury, kidnapping or sexual
23 intercourse compelled by force or threat if both of the
24 following exist:

25 (i) The person against whom the defensive force was
26 used was in the process of unlawfully and forcefully
27 entering, or unlawfully and forcefully entered, a
28 dwelling, residence or occupied vehicle, or if that
29 person unlawfully and forcefully removed or was
30 attempting to unlawfully and forcefully remove another

1 against that other's will from the dwelling, residence or
2 occupied vehicle.

3 (ii) The actor knew or had reason to believe that an
4 unlawful and forceful entry or act was occurring or had
5 occurred.

6 (2.2) The presumption set forth in paragraph (2.1) does
7 not apply if:

8 (i) the person against whom the defensive force is
9 used has the right to be in or is a lawful resident of
10 the dwelling, residence or vehicle, such as an owner or
11 lessee, and is not subject to an active protection from
12 abuse order issued pursuant to 23 Pa.C.S. § 6108
13 (relating to relief) to assure the safety of the actor or
14 any other person in the dwelling, residence or vehicle.

15 (ii) the person sought to be removed is a child or
16 grandchild or is otherwise in the lawful custody or under
17 the lawful guardianship of the person against whom the
18 defensive force is used;

19 (iii) the actor is engaged in an unlawful activity
20 or is using the dwelling, residence or occupied vehicle
21 to further an unlawful activity; or

22 (iv) the person against whom the defensive force is
23 used is a peace officer who enters or attempts to enter
24 the dwelling, residence or vehicle in the performance of
25 his official duties and the peace officer identified
26 himself or the person using force knew or reasonably
27 should have known that the person entering or attempting
28 to enter was a peace officer.

29 (2.3) An actor who is not engaged in an unlawful
30 activity and who is attacked in any other place where the

1 actor has a right to be has no duty to retreat and has the
2 right to stand his ground and meet force with force,
3 including deadly force if the actor believes it is
4 immediately necessary to do so to protect himself against
5 death, serious bodily injury, kidnapping or sexual
6 intercourse by force or threat.

7 (2.4) A person who unlawfully and by force enters or
8 attempts to enter an actor's dwelling, residence or occupied
9 vehicle is presumed to be doing so with the intent to commit:

10 (i) an act resulting in death or serious bodily
11 injury; or

12 (ii) kidnapping or sexual intercourse by force or
13 threat.

14 (2.5) A public officer justified in using force in the
15 performance of his duties or a person justified in using
16 force in his assistance or a person justified in using force
17 in making an arrest or preventing an escape is not obliged to
18 desist from efforts to perform such duty, effect such arrest
19 or prevent such escape because of resistance or threatened
20 resistance by or on behalf of the person against whom such
21 action is directed.

22 (3) [Except as required by paragraphs (1) and (2) of
23 this subsection, a] A person employing protective force may
24 estimate the necessity thereof under the circumstances as he
25 believes them to be when the force is used[, without
26 retreating, surrendering possession, doing any other act
27 which he has no legal duty to do or abstaining from any
28 lawful action.]

29 * * *

30 § 506. Use of force for the protection of other persons.

1 [(a) General rule.--]The use of force upon or toward the
2 person of another is justifiable to protect a third person when:

3 (1) the actor would be justified under section 505 of
4 this title (relating to use of force in self-protection) in
5 using such force to protect himself against the injury he
6 believes to be threatened to the person whom he seeks to
7 protect;

8 (2) under the circumstances as the actor believes them
9 to be, the person whom he seeks to protect would be justified
10 in using such protective force; and

11 (3) the actor believes that his intervention is
12 necessary for the protection of such other person.

13 [(b) Exceptions.--Notwithstanding subsection (a) of this
14 section:

15 (1) When the actor would be obliged under section 505 of
16 this title to retreat, to surrender the possession of a thing
17 or to comply with a demand before using force in self-
18 protection, he is not obliged to do so before using force for
19 the protection of another person, unless he knows that he can
20 thereby secure the complete safety of such other person.

21 (2) When the person whom the actor seeks to protect
22 would be obliged under section 505 of this title to retreat,
23 to surrender the possession of a thing or to comply with a
24 demand if he knew that he could obtain complete safety by so
25 doing, the actor is obliged to try to cause him to do so
26 before using force in his protection if the actor knows that
27 he can obtain complete safety in that way.

28 (3) Neither the actor nor the person whom he seeks to
29 protect is obliged to retreat when in the dwelling or place
30 of work of the other to any greater extent than in his own.]

1 Section 2. Title 42 is amended by adding a section to read:

2 § 8340.2. Civil immunity for use of force.

3 (a) General rule.--An actor who uses force:

4 (1) in self-protection as provided in 18 Pa.C.S. § 505
5 (relating to use of force in self-protection);

6 (2) in the protection of other persons as provided in 18
7 Pa.C.S. § 506 (relating to use of force for the protection of
8 other persons);

9 (3) for the protection of property as provided in 18
10 Pa.C.S. § 507 (relating to use of force for the protection of
11 property);

12 (4) in law enforcement as provided in 18 Pa.C.S. § 508
13 (relating to use of force in law enforcement); or

14 (5) consistent with the actor's special responsibility
15 for care, discipline or safety of others as provided in 18
16 Pa.C.S. § 509 (relating to use of force by persons with
17 special responsibility for care, discipline or safety of
18 others);

19 is justified in using such force and shall be immune from civil
20 liability for personal injuries sustained by a perpetrator which
21 were caused by the acts or omissions of the actor as a result of
22 the use of force.

23 (b) Attorney fees and costs.--If the actor who satisfies the
24 requirements of subsection (a) prevails in a civil action
25 initiated by or on behalf of a perpetrator against the actor,
26 the court shall award reasonable expenses to the actor.
27 Reasonable expenses shall include attorney fees, court costs and
28 compensation for loss of income.

29 (c) Definition.--As used in this section, the term
30 "perpetrator" shall mean a person against whom an actor is

1 justified in using force as provided by 18 Pa.C.S. § 505, 506,
2 507 or 508.

3 Section 3. This act shall take effect in 60 days.