

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 40

Session of
2011

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AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, MARCH 7, 2011

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, for use of force for the protection of other
6 persons, for grading of theft offenses and for licenses to
7 carry firearms; and providing for civil immunity for use of
8 force.

9 The General Assembly finds that:

10 (1) It is proper for law-abiding people to protect

1 themselves, their families and others from intruders and
2 attackers without fear of prosecution or civil action for
3 acting in defense of themselves and others.

4 (2) The Castle Doctrine is a common law doctrine of
5 ancient origins which declares that a home is a person's
6 castle.

7 (3) Section 21 of Article I of the Constitution of
8 Pennsylvania guarantees that the "right of the citizens to
9 bear arms in defense of themselves and the State shall not be
10 questioned."

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

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

18 The General Assembly of the Commonwealth of Pennsylvania
19 hereby enacts as follows:

20 Section 1. Section 501 of Title 18 of the Pennsylvania
21 Consolidated Statutes is amended to read:

22 § 501. Definitions.

23 Subject to additional definitions contained in subsequent
24 provisions of this chapter which are applicable to specific
25 provisions of this chapter, the following words and phrases,
26 when used in this chapter shall have, unless the context clearly
27 indicates otherwise, the meanings given to them in this section:

28 "Believes" or "belief." Means "reasonably believes" or
29 "reasonable belief."

30 "Correctional institution." Any penal institution,

1 penitentiary, State farm, reformatory, prison, jail, house of
2 correction, or other institution for the incarceration or
3 custody of persons under sentence for offenses or awaiting trial
4 or sentence for offenses.

5 "Corrections officer." A full-time employee assigned to the
6 Department of Corrections whose principal duty is the care,
7 custody and control of inmates of a penal or correctional
8 institution operated by the Department of Corrections.

9 "Deadly force." Force which, under the circumstances in
10 which it is used, is readily capable of causing death or serious
11 bodily injury.

12 "Dwelling." Any building or structure, including any
13 attached porch, deck or patio, though movable or temporary, or a
14 portion thereof, which is for the time being the home or place
15 of lodging of the actor.

16 "Peace officer." Any person who by virtue of his office or
17 public employment is vested by law with a duty to maintain
18 public order or to make arrests for offenses, whether that duty
19 extends to all offenses or is limited to specific offenses, or
20 any person on active State duty pursuant to [section 311 of the
21 act of May 27, 1949 (P.L.1903, No.568), known as "The Military
22 Code of 1949."]
23 51 Pa.C.S. § 508 (relating to active duty for
emergency). The term "peace officer" shall also include any
24 member of any park police department of any county of the third
25 class.

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

28 "Unlawful force." Force, including confinement, which is
29 employed without the consent of the person against whom it is
30 directed and the employment of which constitutes an offense or

1 actionable tort or would constitute such offense or tort except
2 for a defense (such as the absence of intent, negligence, or
3 mental capacity; duress; youth; or diplomatic status) not
4 amounting to a privilege to use the force. Assent constitutes
5 consent, within the meaning of this section, whether or not it
6 otherwise is legally effective, except assent to the infliction
7 of death or serious bodily injury.

8 "Vehicle." A conveyance of any kind, whether or not
9 motorized, that is designed to transport people or property.

10 Section 2. Section 505(b) of Title 18 is amended and the
11 section is amended by adding a subsection to read:

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

13 * * *

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

15 (1) The use of force is not justifiable under this
16 section:

17 (i) to resist an arrest which the actor knows is
18 being made by a peace officer, although the arrest is
19 unlawful; or

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

25 (A) the actor is a public officer acting in the
26 performance of his duties or a person lawfully
27 assisting him therein or a person making or assisting
28 in a lawful arrest;

29 (B) the actor has been unlawfully dispossessed
30 of the property and is making a reentry or recaption

1 justified by section 507 of this title (relating to
2 use of force for the protection of property); or

3 (C) the actor believes that such force is
4 necessary to protect himself against death or serious
5 bodily injury.

6 (2) The use of deadly force is not justifiable under
7 this section unless the actor believes that such force is
8 necessary to protect himself against death, serious bodily
9 injury, kidnapping or sexual intercourse compelled by force
10 or threat; nor is it justifiable if:

11 (i) the actor, with the intent of causing death or
12 serious bodily injury, provoked the use of force against
13 himself in the same encounter; or

14 (ii) the actor knows that he can avoid the necessity
15 of using such force with complete safety by retreating
16 [or by surrendering possession of a thing to a person
17 asserting a claim of right thereto or by complying with a
18 demand that he abstain from any action which he has no
19 duty to take], except [that:

20 (A)] the actor is not obliged to retreat from
21 his dwelling or place of work, unless he was the
22 initial aggressor or is assailed in his place of work
23 by another person whose place of work the actor knows
24 it to be[; and

25 (B) a public officer justified in using force in
26 the performance of his duties or a person justified
27 in using force in his assistance or a person
28 justified in using force in making an arrest or
29 preventing an escape is not obliged to desist from
30 efforts to perform such duty, effect such arrest or

1 prevent such escape because of resistance or
2 threatened resistance by or on behalf of the person
3 against whom such action is directed].

4 (2.1) Except as otherwise provided in paragraph (2.2),
5 an actor is presumed to have a reasonable belief that deadly
6 force is immediately necessary to protect himself against
7 death, serious bodily injury, kidnapping or sexual
8 intercourse compelled by force or threat if both of the
9 following conditions exist:

10 (i) The person against whom the force is used is in
11 the process of unlawfully and forcefully entering, or has
12 unlawfully and forcefully entered and is present within,
13 a dwelling, residence or occupied vehicle; or the person
14 against whom the force is used is or is attempting to
15 unlawfully and forcefully remove another against that
16 other's will from the dwelling, residence or occupied
17 vehicle.

18 (ii) The actor knows or has reason to believe that
19 the unlawful and forceful entry or act is occurring or
20 has occurred.

21 (2.2) The presumption set forth in paragraph (2.1) does
22 not apply if:

23 (i) the person against whom the force is used has
24 the right to be in or is a lawful resident of the
25 dwelling, residence or vehicle, such as an owner or
26 lessee;

27 (ii) the person sought to be removed is a child or
28 grandchild or is otherwise in the lawful custody or under
29 the lawful guardianship of the person against whom the
30 protective force is used;

1 (iii) the actor is engaged in a criminal activity or
2 is using the dwelling, residence or occupied vehicle to
3 further a criminal activity; or

4 (iv) the person against whom the force is used is a
5 peace officer acting in the performance of his official
6 duties and the actor using force knew or reasonably
7 should have known that the person was a peace officer.

8 (2.3) An actor who is not engaged in a criminal
9 activity, WHO IS NOT IN ILLEGAL POSSESSION OF A FIREARM and ←
10 who is attacked in any place where the actor would have a
11 duty to retreat under paragraph (2)(ii), has no duty to
12 retreat and has the right to stand his ground and use force,
13 including deadly force, if:

14 (i) the actor has a right to be in the place where
15 he was attacked;

16 (ii) the actor believes it is immediately necessary
17 to do so to protect himself against death, serious bodily
18 injury, kidnapping or sexual intercourse by force or
19 threat; and

20 (iii) the person against whom the force is used
21 displays or otherwise uses:

22 (A) a firearm or replica of a firearm as defined
23 in 42 Pa.C.S. § 9712 (relating to sentences for
24 offenses committed with firearms); or

25 (B) any other weapon readily or apparently
26 capable of lethal use.

27 (2.4) THE EXCEPTION TO THE DUTY TO RETREAT SET FORTH ←
28 UNDER PARAGRAPH (2.3) DOES NOT APPLY IF THE PERSON AGAINST
29 WHOM THE FORCE IS USED IS A PEACE OFFICER ACTING IN THE
30 PERFORMANCE OF HIS OFFICIAL DUTIES AND THE ACTOR USING FORCE

1 KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE PERSON WAS A
2 PEACE OFFICER.

3 ~~(2.4)~~ (2.5) Unless one of the exceptions under paragraph ←
4 (2.2) applies, a person who unlawfully and by force enters or
5 attempts to enter an actor's dwelling, residence or occupied
6 vehicle or removes or attempts to remove another against that
7 other's will from the actor's dwelling, residence or occupied
8 vehicle is presumed to be doing so with the intent to commit:

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

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

13 ~~(2.5)~~ (2.6) A public officer justified in using force in ←
14 the performance of his duties or a person justified in using
15 force in his assistance or a person justified in using force
16 in making an arrest or preventing an escape is not obliged to
17 desist from efforts to perform such duty, effect such arrest
18 or prevent such escape because of resistance or threatened
19 resistance by or on behalf of the person against whom such
20 action is directed.

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

28 * * *

29 (d) Definition.--As used in this section, the term "criminal
30 activity" means conduct which is a misdemeanor or felony, is not

1 ~~justifiable under this chapter and is the proximate cause of~~
2 RELATED TO the confrontation between an actor and the person
3 against whom force is used.

4 Section 3. Section 506 of Title 18 is amended to read:

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

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

8 (1) the actor would be justified under section 505 [of
9 this title] (relating to use of force in self-protection) in
10 using such force to protect himself against the injury he
11 believes to be threatened to the person whom he seeks to
12 protect;

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

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

18 (b) [Exceptions] Exception.--Notwithstanding subsection (a)
19 [of this section:

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

26 (2) When the person whom the actor seeks to protect
27 would be obliged under section 505 of this title to retreat,
28 to surrender the possession of a thing or to comply with a
29 demand if he knew that he could obtain complete safety by so
30 doing, the actor is obliged to try to cause him to do so

1 before using force in his protection if the actor knows that
2 he can obtain complete safety in that way.

3 (3) Neither the actor nor the person whom he seeks to
4 protect is obliged to retreat when in the dwelling or place
5 of work of the other to any greater extent than in his own.],
6 the actor is not obliged to retreat to any greater extent
7 than the person whom he seeks to protect.

8 Section 4. Section 3903(a), (a.1) and (b) of Title 18 are
9 amended and the section is amended by adding a subsection to
10 read:

11 § 3903. Grading of theft offenses.

12 (a) Felony of the second degree.--Theft constitutes a felony
13 of the second degree if:

14 (1) The offense is committed during a manmade disaster,
15 a natural disaster or a war-caused disaster and constitutes a
16 violation of section 3921 (relating to theft by unlawful
17 taking or disposition), 3925 (relating to receiving stolen
18 property), 3928 (relating to unauthorized use of automobiles
19 and other vehicles) or 3929 (relating to retail theft).

20 (2) The property stolen is a firearm.

21 (3) In the case of theft by receiving stolen property,
22 the property received, retained or disposed of is a firearm
23 [and the receiver is in the business of buying or selling
24 stolen property].

25 (4) The property stolen is any amount of anhydrous
26 ammonia.

27 (a.1) Felony of the third degree.--Except as provided in
28 subsection (a) or (a.2), theft constitutes a felony of the third
29 degree if the amount involved exceeds \$2,000, or if the property
30 stolen is an automobile, airplane, motorcycle, motorboat or

1 other motor-propelled vehicle, or in the case of theft by
2 receiving stolen property, if the receiver is in the business of
3 buying or selling stolen property.

4 (a.2) Felony of the first degree.--Theft constitutes a
5 felony of the first degree if, in the case of theft by receiving
6 stolen property, the property received, retained or disposed of
7 is a firearm and the receiver is in the business of buying or
8 selling stolen property.

9 (b) Other grades.--Theft not within subsection (a) [or],
10 (a.1) [of this section] or (a.2), constitutes a misdemeanor of
11 the first degree, except that if the property was not taken from
12 the person or by threat, or in breach of fiduciary obligation,
13 and:

14 (1) the amount involved was \$50 or more but less than
15 \$200 the offense constitutes a misdemeanor of the second
16 degree; or

17 (2) the amount involved was less than \$50 the offense
18 constitutes a misdemeanor of the third degree.

19 * * *

20 Section 5. The definition of "loaded" in section 6102 of
21 Title 18 is amended to read:

22 § 6102. Definitions.

23 Subject to additional definitions contained in subsequent
24 provisions of this subchapter which are applicable to specific
25 provisions of this subchapter, the following words and phrases,
26 when used in this subchapter shall have, unless the context
27 clearly indicates otherwise, the meanings given to them in this
28 section:

29 * * *

30 "Loaded." A firearm is loaded if the firing chamber, the

1 nondetachable magazine or, in the case of a revolver, any of the
2 chambers of the cylinder contain ammunition capable of being
3 fired. In the case of a firearm which utilizes a detachable
4 magazine, the term shall mean a magazine suitable for use in
5 said firearm which magazine contains such ammunition and has
6 been inserted in the firearm or is in the same container or,
7 where the container has multiple compartments, the same
8 compartment thereof as the firearm. If the magazine is inserted
9 into a pouch, holder, holster or other protective device that
10 provides for a complete and secure enclosure of the ammunition,
11 then the pouch, holder, holster or other protective device shall
12 be deemed to be a separate compartment.

13 * * *

14 Section 6. Section 6109(m.3) of Title 18 is amended to read:
15 § 6109. Licenses.

16 * * *

17 (m.3) Construction.--Nothing in this section shall be
18 construed to [permit]:

19 (1) Permit the hunting or harvesting of any wildlife
20 with a firearm or ammunition not otherwise permitted by 34
21 Pa.C.S. (relating to game).

22 (2) Authorize any Commonwealth agency to regulate the
23 possession of firearms in any manner inconsistent with the
24 provisions of this title.

25 * * *

26 Section 7. Title 42 is amended by adding a section to read:
27 § 8340.2. Civil immunity for use of force.

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

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

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

4 (3) for the protection of property as provided in 18
5 Pa.C.S. § 507 (relating to use of force for the protection of
6 property);

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

9 (5) consistent with the actor's special responsibility
10 for care, discipline or safety of others as provided in 18
11 Pa.C.S. § 509 (relating to use of force by persons with
12 special responsibility for care, discipline or safety of
13 others)

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

18 (b) Attorney fees and costs.--If the actor who satisfies the
19 requirements of subsection (a) prevails in a civil action
20 initiated by or on behalf of a perpetrator against the actor,
21 the court shall award reasonable expenses to the actor.
22 Reasonable expenses shall include, but not be limited to,
23 attorney fees, expert witness fees, court costs and compensation
24 for loss of income.

25 (c) Definition.--As used in this section, the term
26 "perpetrator" shall mean a person against whom an actor is
27 justified in using force as provided by 18 Pa.C.S. § 505, 506,
28 507, 508 or 509.

29 Section 8. This act shall take effect in 60 days.