

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**

**No. 641**      Session of  
2007

INTRODUCED BY CAPPELLI, BENNINGHOFF, BAKER, BARRAR, BASTIAN, BELFANTI, BOYD, CALTAGIRONE, CASORIO, CAUSER, CLYMER, DENLINGER, ELLIS, EVERETT, FAIRCHILD, GEIST, GEORGE, GINGRICH, GODSHALL, GRELL, GRUCELA, HALUSKA, HARRIS, HERSHEY, HESS, HICKERNELL, HUTCHINSON, KAUFFMAN, M. KELLER, KILLION, KOTIK, MAJOR, MARSICO, METCALFE, R. MILLER, PAYNE, PEIFER, PETRARCA, PETRI, PHILLIPS, PICKETT, PYLE, RAPP, SAINATO, SAYLOR, SIPTROTH, S. H. SMITH, SOLOBAY, SONNEY, STERN, R. STEVENSON, SURRA, TURZAI AND WANSACZ, MARCH 6, 2007

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 6, 2007

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 and for licenses to carry firearms; providing for  
7 civil immunity for use of force; and further providing for  
8 sentences for offenses committed with firearms.

9 The General Assembly finds that:

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

14 (2) The Castle Doctrine is a common law doctrine of  
15 ancient origins which declares that a home is a person's  
16 castle.

17 (3) Section 21 of Article I of the Constitution of

1 Pennsylvania guarantees that the "right of the citizens to  
2 bear arms in defense of themselves and the State shall not be  
3 questioned."

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

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

11 (6) Despite the clear language of 18 Pa.C.S. §§ 6106 and  
12 6109, inconsistent statutory and regulatory language appears  
13 to limit the ability of law enforcement officers and properly  
14 licensed individuals to carry a firearm throughout this  
15 Commonwealth.

16 The General Assembly of the Commonwealth of Pennsylvania  
17 hereby enacts as follows:

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

20 § 501. Definitions.

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

26 "Believes" or "belief." Means "reasonably believes" or  
27 "reasonable belief."

28 "Correctional institution." Any penal institution,  
29 penitentiary, State farm, reformatory, prison, jail, house of  
30 correction, or other institution for the incarceration or

1 custody of persons under sentence for offenses or awaiting trial  
2 or sentence for offenses.

3 "Deadly force." Force which, under the circumstances in  
4 which it is used, is readily capable of causing death or serious  
5 bodily injury.

6 "Dwelling." Any building or structure, including any  
7 attached porch, deck or patio, though movable or temporary, or a  
8 portion thereof, which is for the time being the home or place  
9 of lodging of the actor.

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

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

22 "Unlawful force." Force, including confinement, which is  
23 employed without the consent of the person against whom it is  
24 directed and the employment of which constitutes an offense or  
25 actionable tort or would constitute such offense or tort except  
26 for a defense (such as the absence of intent, negligence, or  
27 mental capacity; duress; youth; or diplomatic status) not  
28 amounting to a privilege to use the force. Assent constitutes  
29 consent, within the meaning of this section, whether or not it  
30 otherwise is legally effective, except assent to the infliction

1 of death or serious bodily injury.

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

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

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

7 \* \* \*

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

9 (1) The use of force is not justifiable under this  
10 section:

11 (i) to resist an arrest which the actor knows is  
12 being made by a peace officer, although the arrest is  
13 unlawful; or

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

19 (A) the actor is a public officer acting in the  
20 performance of his duties or a person lawfully  
21 assisting him therein or a person making or assisting  
22 in a lawful arrest;

23 (B) the actor has been unlawfully dispossessed  
24 of the property and is making a reentry or recaption  
25 justified by section 507 of this title (relating to  
26 use of force for the protection of property); or

27 (C) the actor believes that such force is  
28 necessary to protect himself against death or serious  
29 bodily injury.

30 (2) The use of deadly force is not justifiable under

1 this section unless the actor believes that such force is  
2 necessary to protect himself against death, serious bodily  
3 injury, kidnapping or sexual intercourse compelled by force  
4 or threat; nor is it justifiable if:

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

8 (ii) the actor knows that he can avoid the necessity  
9 of using such force with complete safety by retreating  
10 [or by surrendering possession of a thing to a person  
11 asserting a claim of right thereto or by complying with a  
12 demand that he abstain from any action which he has no  
13 duty to take], except [that:

14 (A)] the actor is not obliged to retreat from  
15 his dwelling [or place of work,] unless he was the  
16 initial aggressor [or is assailed in his place of  
17 work by another person whose place of work the actor  
18 knows it to be; and

19 (B) a public officer justified in using force in  
20 the performance of his duties or a person justified  
21 in using force in his assistance or a person  
22 justified in using force in making an arrest or  
23 preventing an escape is not obliged to desist from  
24 efforts to perform such duty, effect such arrest or  
25 prevent such escape because of resistance or  
26 threatened resistance by or on behalf of the person  
27 against whom such action is directed].

28 (2.1) Except as otherwise provided in paragraph (2.2),  
29 an actor is presumed to have a reasonable belief that deadly  
30 force is immediately necessary to protect himself against

1 death, serious bodily injury, kidnapping or sexual  
2 intercourse compelled by force or threat if both of the  
3 following exist:

4 (i) The person against whom the protective force was  
5 used was in the process of unlawfully and forcefully  
6 entering, or had unlawfully and forcefully entered, a  
7 dwelling, residence or occupied vehicle; or the person  
8 against whom the protective force was used had unlawfully  
9 and forcefully removed or was attempting to unlawfully  
10 and forcefully remove another against that other's will  
11 from the dwelling, residence or occupied vehicle.

12 (ii) The actor knew or had reason to believe that an  
13 unlawful and forceful entry or act was occurring or had  
14 occurred.

15 (2.2) The presumption set forth in paragraph (2.1) does  
16 not apply if:

17 (i) the person against whom the protective force is  
18 used has the right to be in or is a lawful resident of  
19 the dwelling, residence or vehicle, such as an owner or  
20 lessee;

21 (ii) the person sought to be removed is a child or  
22 grandchild or is otherwise in the lawful custody or under  
23 the lawful guardianship of the person against whom the  
24 protective force is used;

25 (iii) the actor is engaged in a criminal activity or  
26 is using the dwelling, residence or occupied vehicle to  
27 further a criminal activity; or

28 (iv) the person against whom the protective force is  
29 used is a peace officer acting in the performance of his  
30 official duties and the peace officer identified himself

1           or the person using force knew or reasonably should have  
2           known that the person was a peace officer.

3           (2.3) An actor who is not engaged in a criminal activity  
4           and who is attacked in any place where the actor has a right  
5           to be has no duty to retreat and has the right to stand his  
6           ground and use protective force, including deadly force, if  
7           the actor believes it is immediately necessary to do so to  
8           protect himself against death, serious bodily injury,  
9           kidnapping or sexual intercourse by force or threat.

10           (2.4) Unless one of the exceptions under paragraph (2.2)  
11           applies, a person who unlawfully and by force enters or  
12           attempts to enter an actor's dwelling, residence or occupied  
13           vehicle or removes or attempts to remove another against that  
14           other's will from the actor's dwelling, residence or occupied  
15           vehicle is presumed to be doing so with the intent to commit:

16           (i) an act resulting in death or serious bodily  
17           injury; or

18           (ii) kidnapping or sexual intercourse by force or  
19           threat.

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

28           (3) Except as [required by paragraphs (1) and (2) of  
29           this subsection,] otherwise required by this subsection, a  
30           person employing protective force may estimate the necessity

1       thereof under the circumstances as he believes them to be  
2       when the force is used, without retreating, surrendering  
3       possession, doing any other act which he has no legal duty to  
4       do or abstaining from any lawful action.

5       \* \* \*

6       (d) Definition.--As used in this section, the term "criminal  
7       activity" means conduct which is a misdemeanor or felony, is not  
8       justifiable under this chapter and is the proximate cause of the  
9       confrontation between an actor and the person against whom  
10      protective force is used.

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

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

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

15              (1) the actor would be justified under section 505 [of  
16              this title] (relating to use of force in self-protection) in  
17              using such force to protect himself against the injury he  
18              believes to be threatened to the person whom he seeks to  
19              protect;

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

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

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

27              (1) When the actor would be obliged under section 505 of  
28              this title to retreat, to surrender the possession of a thing  
29              or to comply with a demand before using force in self-  
30              protection, he is not obliged to do so before using force for



1 the protection of another person, unless he knows that he can  
2 thereby secure the complete safety of such other person.

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

10 (3) Neither the actor nor the person whom he seeks to  
11 protect is obliged to retreat when in the dwelling or place  
12 of work of the other to any greater extent than in his own.]  
13 , the actor is not obliged to retreat to any greater extent  
14 than the person whom he seeks to protect.

15 Section 4. The definition of "loaded" in section 6102 of  
16 Title 18 is amended to read:

17 § 6102. Definitions.

18 Subject to additional definitions contained in subsequent  
19 provisions of this subchapter which are applicable to specific  
20 provisions of this subchapter, the following words and phrases,  
21 when used in this subchapter shall have, unless the context  
22 clearly indicates otherwise, the meanings given to them in this  
23 section:

24 \* \* \*

25 "Loaded." A firearm is loaded if the firing chamber, the  
26 nondetachable magazine or, in the case of a revolver, any of the  
27 chambers of the cylinder contain ammunition capable of being  
28 fired. In the case of a firearm which utilizes a detachable  
29 magazine, the term shall mean a magazine suitable for use in  
30 said firearm which magazine contains such ammunition and has

1 been inserted in the firearm or is in the same container or,  
2 where the container has multiple compartments, the same  
3 compartment thereof as the firearm. If the magazine is inserted  
4 into a pouch, holder, holster or other protective device that  
5 provides for a complete and secure enclosure of the ammunition,  
6 then the pouch, holder, holster or other protective device shall  
7 be deemed to be a separate compartment.

8 \* \* \*

9 Section 5. Section 6109 of Title 18 is amended by adding  
10 subsections to read:

11 § 6109. Licenses.

12 \* \* \*

13 (m.1) Inconsistent provisions.--Notwithstanding the  
14 provisions of 75 Pa.C.S. § 7727 (relating to additional  
15 limitations on operation), or the act of June 28, 1995 (P.L.89,  
16 No.18), known as the Conservation and Natural Resources Act, and  
17 regulations promulgated under that act, a firearm may be carried  
18 as provided in subsection (a) by:

19 (1) a law enforcement officer whose current  
20 identification as a law enforcement officer shall be  
21 construed as a valid license to carry a firearm; or

22 (2) any licensee.

23 (m.2) Construction.--Nothing in this section shall be  
24 construed to:

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

28 (2) Authorize any Commonwealth agency to regulate the  
29 possession of firearms in any manner inconsistent with the  
30 provisions of this title.

1 \* \* \*

2 Section 6. Title 42 is amended by adding a section to read:

3 § 8340.2. Civil immunity for use of force.

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

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

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

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

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

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

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

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

28 Reasonable expenses shall include, but not be limited to,  
29 attorney fees, expert witness fees, court costs and compensation  
30 for loss of income.

1        (c) Definition.--As used in this section, the term  
2        "perpetrator" shall mean a person against whom an actor is  
3        justified in using force as provided by 18 Pa.C.S. § 505, 506,  
4        507, 508 or 509.

5        Section 7. This act shall take effect in 60 days.