

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 40

Session of 2009

INTRODUCED BY PERRY, METCALFE, BAKER, BARRAR, BELFANTI, BENNINGHOFF, BOBACK, CAUSER, CREIGHTON, CUTLER, DALLY, ELLIS, FAIRCHILD, FLECK, GEIST, GEORGE, GIBBONS, GODSHALL, GRELL, GROVE, HALUSKA, HARHAI, HARRIS, HESS, HICKERNELL, HUTCHINSON, KAUFFMAN, KILLION, KORTZ, LONGIETTI, MARSHALL, MILLER, MOUL, PAYNE, PEIFER, PICKETT, PYLE, QUIGLEY, RAPP, READSHAW, REED, ROAE, ROCK, ROHRER, SAYLOR, SIPTROTH, S. H. SMITH, SOLOBAY, SONNEY, STABACK, STEVENSON, SWANGER, TRUE, TURZAI, VULAKOVICH, DENLINGER, HORNAMAN, GRUCELA, CLYMER, TALLMAN, GABLER, HARPER, MENSCH, WHITE, KOTIK, METZGAR, MAHONEY, KULA, PETRARCA, BURNS, MUSTIO, GERGELY, DeLUCA, MAHER, PETRI, KESSLER, HARHART, FARRY, MILLARD, KRIEGER, BOYD, DeWEESE, BROOKS, BEAR, SAINATO, CHRISTIANA, PHILLIPS, BEYER, GINGRICH, COX, REICHLEY, HELM, CASORIO, OBERLANDER, BARBIN, GOODMAN, REESE, SCHRODER, EVERETT, SEIP, WATSON, PERZEL, DERMODY, MAJOR, J. EVANS, BRENNAN, M. KELLER, MATZIE, SCAVELLO, M. SMITH, DAY, DALEY, PALLONE, DEASY, MARKOSEK, KNOWLES, MICOZZIE, MURPHY, HANNA, CARROLL, D. COSTA, McGEEHAN, QUINN, HOUGHTON, GILLESPIE AND MICCARELLI, JANUARY 26, 2009

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 25, 2010

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; and further providing for sentences for offenses  
9 committed with firearms.



10 The General Assembly finds that:

11 (1) It is proper for law-abiding people to protect  
12 themselves, their families and others from intruders and

1 attackers without fear of prosecution or civil action for  
2 acting in defense of themselves and others.

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

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

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

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

17 ~~(6) Despite the clear language of 18 Pa.C.S. §§ 6106 and~~ ←  
18 ~~6109, inconsistent statutory and regulatory language appears~~  
19 ~~to limit the ability of law enforcement officers and properly~~  
20 ~~licensed individuals to carry a firearm throughout this~~  
21 ~~Commonwealth.~~

22 The General Assembly of the Commonwealth of Pennsylvania  
23 hereby enacts as follows:

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

26 § 501. Definitions.

27 Subject to additional definitions contained in subsequent  
28 provisions of this chapter which are applicable to specific  
29 provisions of this chapter, the following words and phrases,  
30 when used in this chapter shall have, unless the context clearly

1 indicates otherwise, the meanings given to them in this section:

2 "Believes" or "belief." Means "reasonably believes" or  
3 "reasonable belief."

4 "Correctional institution." Any penal institution,  
5 penitentiary, State farm, reformatory, prison, jail, house of  
6 correction, or other institution for the incarceration or  
7 custody of persons under sentence for offenses or awaiting trial  
8 or sentence for offenses.

9 "Corrections officer." A full-time employee assigned to the  
10 Department of Corrections whose principal duty is the care,  
11 custody and control of inmates of a penal or correctional  
12 institution operated by the Department of Corrections.

13 "Deadly force." Force which, under the circumstances in  
14 which it is used, is readily capable of causing death or serious  
15 bodily injury.

16 "Dwelling." Any building or structure, including any  
17 attached porch, deck or patio, though movable or temporary, or a  
18 portion thereof, which is for the time being the home or place  
19 of lodging of the actor.

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

30 "Residence." A dwelling in which a person resides, either

1 temporarily or permanently, or visits as an invited guest.

2 "Unlawful force." Force, including confinement, which is  
3 employed without the consent of the person against whom it is  
4 directed and the employment of which constitutes an offense or  
5 actionable tort or would constitute such offense or tort except  
6 for a defense (such as the absence of intent, negligence, or  
7 mental capacity; duress; youth; or diplomatic status) not  
8 amounting to a privilege to use the force. Assent constitutes  
9 consent, within the meaning of this section, whether or not it  
10 otherwise is legally effective, except assent to the infliction  
11 of death or serious bodily injury.

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

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

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

17 \* \* \*

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

19 (1) The use of force is not justifiable under this  
20 section:

21 (i) to resist an arrest which the actor knows is  
22 being made by a peace officer, although the arrest is  
23 unlawful; or

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

29 (A) the actor is a public officer acting in the  
30 performance of his duties or a person lawfully

1            assisting him therein or a person making or assisting  
2            in a lawful arrest;

3            (B) the actor has been unlawfully dispossessed  
4            of the property and is making a reentry or recaption  
5            justified by section 507 of this title (relating to  
6            use of force for the protection of property); or

7            (C) the actor believes that such force is  
8            necessary to protect himself against death or serious  
9            bodily injury.

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

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

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

24           (A)] the actor is not obliged to retreat from  
25           his dwelling ~~for~~ place of work,<sup>+</sup> unless he was the ←  
26           initial aggressor ~~for~~ is assailed in his place of ←  
27           work by another person whose place of work the actor  
28           knows it to be[; and ←

29           (B) a public officer justified in using force in  
30           the performance of his duties or a person justified

1 in using force in his assistance or a person  
2 justified in using force in making an arrest or  
3 preventing an escape is not obliged to desist from  
4 efforts to perform such duty, effect such arrest or  
5 prevent such escape because of resistance or  
6 threatened resistance by or on behalf of the person  
7 against whom such action is directed].

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

14 (i) The person against whom the ~~protective force was~~ ←  
15 IS used ~~was~~ IS in the process of unlawfully and ←  
16 forcefully entering, or ~~had~~ HAS unlawfully and forcefully ←  
17 entered AND IS PRESENT WITHIN, a dwelling, residence or ←  
18 occupied vehicle; or the person against whom the  
19 ~~protective force was~~ IS used ~~had~~ unlawfully and ←  
20 ~~forcefully removed or was~~ IS OR IS attempting to ←  
21 unlawfully and forcefully remove another against that  
22 other's will from the dwelling, residence or occupied  
23 vehicle.

24 (ii) The actor ~~knew or had~~ KNOWS OR HAS reason to ←  
25 believe that ~~an~~ THE unlawful and forceful entry or act ←  
26 ~~was occurring or had~~ IS OCCURRING OR HAS occurred. ←

27 (2.2) The presumption set forth in paragraph (2.1) does  
28 not apply if:

29 (i) the person against whom the ~~protective force is~~ ←  
30 used has the right to be in or is a lawful resident of

1 the dwelling, residence or vehicle, such as an owner or  
2 lessee;

3 (ii) the person sought to be removed is a child or  
4 grandchild or is otherwise in the lawful custody or under  
5 the lawful guardianship of the person against whom the  
6 protective force is used;

7 (iii) the actor is engaged in a criminal activity or  
8 is using the dwelling, residence or occupied vehicle to  
9 further a criminal activity; or

10 (iv) the person against whom the protective force is ←  
11 used is a peace officer acting in the performance of his  
12 official duties and the peace officer identified himself ←  
13 or the person THE ACTOR using force knew or reasonably ←  
14 should have known that the person was a peace officer.

15 (2.3) An actor who is not engaged in a criminal  
16 activity, and who is attacked in any place where the actor ←  
17 has a right to be WOULD HAVE A DUTY TO RETREAT UNDER ←  
18 PARAGRAPH (2) (II), has no duty to retreat and has the right  
19 to stand his ground and use protective force, including ←  
20 deadly force, if the actor believes it is immediately ←  
21 necessary to do so to protect himself against death, serious  
22 bodily injury, kidnapping or sexual intercourse by force or  
23 threat. IF: ←

24 (I) THE ACTOR HAS A RIGHT TO BE IN THE PLACE WHERE  
25 HE WAS ATTACKED;

26 (II) THE ACTOR BELIEVES IT IS IMMEDIATELY NECESSARY  
27 TO DO SO TO PROTECT HIMSELF AGAINST DEATH, SERIOUS BODILY  
28 INJURY, KIDNAPPING OR SEXUAL INTERCOURSE BY FORCE OR  
29 THREAT; AND

30 (III) THE PERSON AGAINST WHOM THE FORCE IS USED

1           DISPLAYS OR OTHERWISE USES:

2                   (A) A FIREARM OR REPLICA OF A FIREARM AS DEFINED  
3                   IN 42 PA.C.S. § 9712 (RELATING TO SENTENCES FOR  
4                   OFFENSES COMMITTED WITH FIREARMS); OR

5                   (B) ANY OTHER WEAPON READILY OR APPARENTLY  
6                   CAPABLE OF LETHAL USE.

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

13                   (i) an act resulting in death or serious bodily  
14                   injury; or

15                   (ii) kidnapping or sexual intercourse by force or  
16                   threat.

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

25           (3) Except as [required by paragraphs (1) and (2) of  
26           this subsection,] otherwise required by this subsection, a  
27           person employing protective force may estimate the necessity  
28           thereof under the circumstances as he believes them to be  
29           when the force is used, without retreating, surrendering  
30           possession, doing any other act which he has no legal duty to



1 do or abstaining from any lawful action.

2 \* \* \*

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

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

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

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

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

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

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

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

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

30 (2) When the person whom the actor seeks to protect

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

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

12 SECTION 4. SECTION 3903(A), (A.1) AND (B) OF TITLE 18 ARE ←  
13 AMENDED AND THE SECTION IS AMENDED BY ADDING A SUBSECTION TO  
14 READ:

15 § 3903. GRADING OF THEFT OFFENSES.

16 (A) FELONY OF THE SECOND DEGREE.--THEFT CONSTITUTES A FELONY  
17 OF THE SECOND DEGREE IF:

18 (1) THE OFFENSE IS COMMITTED DURING A MANMADE DISASTER,  
19 A NATURAL DISASTER OR A WAR-CAUSED DISASTER AND CONSTITUTES A  
20 VIOLATION OF SECTION 3921 (RELATING TO THEFT BY UNLAWFUL  
21 TAKING OR DISPOSITION), 3925 (RELATING TO RECEIVING STOLEN  
22 PROPERTY), 3928 (RELATING TO UNAUTHORIZED USE OF AUTOMOBILES  
23 AND OTHER VEHICLES) OR 3929 (RELATING TO RETAIL THEFT).

24 (2) THE PROPERTY STOLEN IS A FIREARM.

25 (3) IN THE CASE OF THEFT BY RECEIVING STOLEN PROPERTY,  
26 THE PROPERTY RECEIVED, RETAINED OR DISPOSED OF IS A FIREARM  
27 [AND THE RECEIVER IS IN THE BUSINESS OF BUYING OR SELLING  
28 STOLEN PROPERTY].

29 (4) THE PROPERTY STOLEN IS ANY AMOUNT OF ANHYDROUS  
30 AMMONIA.

1 (A.1) FELONY OF THE THIRD DEGREE.--EXCEPT AS PROVIDED IN  
2 SUBSECTION (A) OR (A.2), THEFT CONSTITUTES A FELONY OF THE THIRD  
3 DEGREE IF THE AMOUNT INVOLVED EXCEEDS \$2,000, OR IF THE PROPERTY  
4 STOLEN IS AN AUTOMOBILE, AIRPLANE, MOTORCYCLE, MOTORBOAT OR  
5 OTHER MOTOR-PROPELLED VEHICLE, OR IN THE CASE OF THEFT BY  
6 RECEIVING STOLEN PROPERTY, IF THE RECEIVER IS IN THE BUSINESS OF  
7 BUYING OR SELLING STOLEN PROPERTY.

8 (A.2) FELONY OF THE FIRST DEGREE.--THEFT CONSTITUTES A  
9 FELONY OF THE FIRST DEGREE IF, IN THE CASE OF THEFT BY RECEIVING  
10 STOLEN PROPERTY, THE PROPERTY RECEIVED, RETAINED OR DISPOSED OF  
11 IS A FIREARM AND THE RECEIVER IS IN THE BUSINESS OF BUYING OR  
12 SELLING STOLEN PROPERTY.

13 (B) OTHER GRADES.--THEFT NOT WITHIN SUBSECTION (A) [OR],  
14 (A.1) [OF THIS SECTION] OR (A.2), CONSTITUTES A MISDEMEANOR OF  
15 THE FIRST DEGREE, EXCEPT THAT IF THE PROPERTY WAS NOT TAKEN FROM  
16 THE PERSON OR BY THREAT, OR IN BREACH OF FIDUCIARY OBLIGATION,  
17 AND:

18 (1) THE AMOUNT INVOLVED WAS \$50 OR MORE BUT LESS THAN  
19 \$200 THE OFFENSE CONSTITUTES A MISDEMEANOR OF THE SECOND  
20 DEGREE; OR

21 (2) THE AMOUNT INVOLVED WAS LESS THAN \$50 THE OFFENSE  
22 CONSTITUTES A MISDEMEANOR OF THE THIRD DEGREE.

23 \* \* \*

24 Section 4 5. The definition of "loaded" in section 6102 of  
25 Title 18 is amended to read:

26 § 6102. Definitions.

27 Subject to additional definitions contained in subsequent  
28 provisions of this subchapter which are applicable to specific  
29 provisions of this subchapter, the following words and phrases,  
30 when used in this subchapter shall have, unless the context



1 clearly indicates otherwise, the meanings given to them in this  
2 section:

3 \* \* \*

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

17 \* \* \*

18 ~~Section 5. Section 6109 of Title 18 is amended by adding~~ ←  
19 ~~subsections to read:~~

20 SECTION 6. SECTION 6109(M.3) OF TITLE 18 IS AMENDED TO READ: ←  
21 § 6109. Licenses.

22 \* \* \*

23 ~~(m.4) Inconsistent provisions. Notwithstanding the~~ ←  
24 ~~provisions of 75 Pa.C.S. § 7727 (relating to additional~~  
25 ~~limitations on operation), or the act of June 28, 1995 (P.L.89,~~  
26 ~~No.18), known as the Conservation and Natural Resources Act, and~~  
27 ~~regulations promulgated under that act, a firearm may be carried~~  
28 ~~as provided in subsection (a) by:~~

29 ~~(1) a law enforcement officer whose current~~  
30 ~~identification as a law enforcement officer shall be~~

1 ~~construed as a valid license to carry a firearm; or~~

2 ~~(2) any licensee.~~

3 ~~(m.5) Construction. Nothing in this section shall be~~

4 ~~construed to:~~

5 ~~(1) Permit the hunting or harvesting of any wildlife~~  
6 ~~with a firearm or ammunition not otherwise permitted by 34~~  
7 ~~Pa.C.S. (relating to game).~~

8 ~~(2) Authorize any Commonwealth agency to regulate the~~  
9 ~~possession of firearms in any manner inconsistent with the~~  
10 ~~provisions of this title.~~

11 (M.3) CONSTRUCTION.--NOTHING IN THIS SECTION SHALL BE  
12 CONSTRUED TO [PERMIT]:

13 (1) PERMIT THE HUNTING OR HARVESTING OF ANY WILDLIFE  
14 WITH A FIREARM OR AMMUNITION NOT OTHERWISE PERMITTED BY 34  
15 PA.C.S. (RELATING TO GAME).

16 (2) AUTHORIZE ANY COMMONWEALTH AGENCY TO REGULATE THE  
17 POSSESSION OF FIREARMS IN ANY MANNER INCONSISTENT WITH THE  
18 PROVISIONS OF THIS TITLE.

19 \* \* \*

20 Section 6 7. Title 42 is amended by adding a section to  
21 read:

22 § 8340.2. Civil immunity for use of force.

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

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

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

29 (3) for the protection of property as provided in 18  
30 Pa.C.S. § 507 (relating to use of force for the protection of

1 property);

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

4 (5) consistent with the actor's special responsibility  
5 for care, discipline or safety of others as provided in 18  
6 Pa.C.S. § 509 (relating to use of force by persons with  
7 special responsibility for care, discipline or safety of  
8 others)

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

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

17 Reasonable expenses shall include, but not be limited to,  
18 attorney fees, expert witness fees, court costs and compensation  
19 for loss of income.

20 (c) Definition.--As used in this section, the term  
21 "perpetrator" shall mean a person against whom an actor is  
22 justified in using force as provided by 18 Pa.C.S. § 505, 506,  
23 507, 508 or 509.

24 Section 7 8. This act shall take effect in 60 days.

