
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 40

Session of
2011

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REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 31, 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
11 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 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

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

21 § 501. Definitions.

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

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

29 "Correctional institution." Any penal institution,
30 penitentiary, State farm, reformatory, prison, jail, house of

1 correction, or other institution for the incarceration or
2 custody of persons under sentence for offenses or awaiting trial
3 or sentence for offenses.

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

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

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

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

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

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

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

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

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

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

12 * * *

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

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

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

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

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

28 (B) the actor has been unlawfully dispossessed
29 of the property and is making a reentry or recaption
30 justified by section 507 of this title (relating to

1 use of force for the protection of property); or

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

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

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

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

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

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

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

3 (2.1) Except as otherwise provided in paragraph (2.2),
4 an actor is presumed to have a reasonable belief that deadly
5 force is immediately necessary to protect himself against
6 death, serious bodily injury, kidnapping or sexual
7 intercourse compelled by force or threat if both of the
8 following conditions exist:

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

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

20 (2.2) The presumption set forth in paragraph (2.1) does
21 not apply if:

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

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

30 (iii) the actor is engaged in a criminal activity or

1 is using the dwelling, residence or occupied vehicle to
2 further a criminal activity; or

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

7 (2.3) An actor who is not engaged in a criminal
8 activity, and who is attacked in any place where the actor
9 would have a duty to retreat under paragraph (2) (ii), has no
10 duty to retreat and has the right to stand his ground and use
11 force, including deadly force, if:

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

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

18 (iii) the person against whom the force is used
19 displays or otherwise uses:

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

23 (B) any other weapon readily or apparently
24 capable of lethal use.

25 (2.4) Unless one of the exceptions under paragraph (2.2)
26 applies, a person who unlawfully and by force enters or
27 attempts to enter an actor's dwelling, residence or occupied
28 vehicle or removes or attempts to remove another against that
29 other's will from the actor's dwelling, residence or occupied
30 vehicle is presumed to be doing so with the intent to commit:

1 (i) an act resulting in death or serious bodily
2 injury; or
3 (ii) kidnapping or sexual intercourse by force or
4 threat.

5 (2.5) A public officer justified in using force in the
6 performance of his duties or a person justified in using
7 force in his assistance or a person justified in using force
8 in making an arrest or preventing an escape is not obliged to
9 desist from efforts to perform such duty, effect such arrest
10 or prevent such escape because of resistance or threatened
11 resistance by or on behalf of the person against whom such
12 action is directed.

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

20 * * *

21 (d) Definition.--As used in this section, the term "criminal
22 activity" means conduct which is a misdemeanor or felony, is not
23 justifiable under this chapter and is the proximate cause of the
24 confrontation between an actor and the person against whom force
25 is used.

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

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

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

30 (1) the actor would be justified under section 505 [of

1 this title] (relating to use of force in self-protection) in
2 using such force to protect himself against the injury he
3 believes to be threatened to the person whom he seeks to
4 protect;

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

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

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

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

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

25 (3) Neither the actor nor the person whom he seeks to
26 protect is obliged to retreat when in the dwelling or place
27 of work of the other to any greater extent than in his own.],
28 the actor is not obliged to retreat to any greater extent
29 than the person whom he seeks to protect.

30 Section 4. Section 3903(a), (a.1) and (b) of Title 18 are

1 amended and the section is amended by adding a subsection to
2 read:

3 § 3903. Grading of theft offenses.

4 (a) Felony of the second degree.--Theft constitutes a felony
5 of the second degree if:

6 (1) The offense is committed during a manmade disaster,
7 a natural disaster or a war-caused disaster and constitutes a
8 violation of section 3921 (relating to theft by unlawful
9 taking or disposition), 3925 (relating to receiving stolen
10 property), 3928 (relating to unauthorized use of automobiles
11 and other vehicles) or 3929 (relating to retail theft).

12 (2) The property stolen is a firearm.

13 (3) In the case of theft by receiving stolen property,
14 the property received, retained or disposed of is a firearm
15 [and the receiver is in the business of buying or selling
16 stolen property].

17 (4) The property stolen is any amount of anhydrous
18 ammonia.

19 (a.1) Felony of the third degree.--Except as provided in
20 subsection (a) or (a.2), theft constitutes a felony of the third
21 degree if the amount involved exceeds \$2,000, or if the property
22 stolen is an automobile, airplane, motorcycle, motorboat or
23 other motor-propelled vehicle, or in the case of theft by
24 receiving stolen property, if the receiver is in the business of
25 buying or selling stolen property.

26 (a.2) Felony of the first degree.--Theft constitutes a
27 felony of the first degree if, in the case of theft by receiving
28 stolen property, the property received, retained or disposed of
29 is a firearm and the receiver is in the business of buying or
30 selling stolen property.

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

6 (1) the amount involved was \$50 or more but less than
7 \$200 the offense constitutes a misdemeanor of the second
8 degree; or

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

11 * * *

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

14 § 6102. Definitions.

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

21 * * *

22 "Loaded." A firearm is loaded if the firing chamber, the
23 nondetachable magazine or, in the case of a revolver, any of the
24 chambers of the cylinder contain ammunition capable of being
25 fired. In the case of a firearm which utilizes a detachable
26 magazine, the term shall mean a magazine suitable for use in
27 said firearm which magazine contains such ammunition and has
28 been inserted in the firearm or is in the same container or,
29 where the container has multiple compartments, the same
30 compartment thereof as the firearm. If the magazine is inserted

1 into a pouch, holder, holster or other protective device that
2 provides for a complete and secure enclosure of the ammunition,
3 then the pouch, holder, holster or other protective device shall
4 be deemed to be a separate compartment.

5 * * *

6 Section 6. Section 6109(m.3) of Title 18 is amended to read:
7 § 6109. Licenses.

8 * * *

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

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

14 (2) Authorize any Commonwealth agency to regulate the
15 possession of firearms in any manner inconsistent with the
16 provisions of this title.

17 * * *

18 Section 7. Title 42 is amended by adding a section to read:
19 § 8340.2. Civil immunity for use of force.

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

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

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

26 (3) for the protection of property as provided in 18
27 Pa.C.S. § 507 (relating to use of force for the protection of
28 property);

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

1 (5) consistent with the actor's special responsibility
2 for care, discipline or safety of others as provided in 18
3 Pa.C.S. § 509 (relating to use of force by persons with
4 special responsibility for care, discipline or safety of
5 others)
6 is justified in using such force and shall be immune from civil
7 liability for personal injuries sustained by a perpetrator which
8 were caused by the acts or omissions of the actor as a result of
9 the use of force.

10 (b) Attorney fees and costs.--If the actor who satisfies the
11 requirements of subsection (a) prevails in a civil action
12 initiated by or on behalf of a perpetrator against the actor,
13 the court shall award reasonable expenses to the actor.
14 Reasonable expenses shall include, but not be limited to,
15 attorney fees, expert witness fees, court costs and compensation
16 for loss of income.

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

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