

Hall of the House of Representatives
92nd General Assembly - Regular Session, 2019
Amendment Form

Subtitle of House Bill No. 1059

CONCERNING THE USE OF PHYSICAL FORCE IN SELF-DEFENSE OR IN THE DEFENSE OF OTHERS.

Amendment No. 3 to House Bill 1059

Amend House Bill No. 1059 as engrossed, H2/6/19 (version: 02/06/2019 09:54:00 AM)

Delete everything after the enacting clause and substitute the following:

"SECTION 1. DO NOT CODIFY. Legislative intent.

It is the intent of the General Assembly to implement the same self-defense scheme as have our neighbors in Tennessee, as of January 1, 2019.

SECTION 2. Arkansas Code § 5-2-606 is amended to read as follows:

5-2-606. Use of physical force or deadly physical force in defense of a person.

~~(a)(1) A person is justified in using physical force upon another person to defend himself or herself or a third person from what the person reasonably believes to be the use or imminent use of unlawful physical force by that other person, and the person may use a degree of physical force that he or she reasonably believes to be necessary.~~

~~(2) However, the person may not use deadly physical force except as provided in § 5-2-607.~~

~~(b) A person is not justified in using physical force upon another person if:~~

~~(1) With purpose to cause physical injury or death to the other person, the person provokes the use of unlawful physical force by the other person;~~

~~(2)(A) The person is the initial aggressor.~~

~~(B) However, the initial aggressor's use of physical force upon another person is justifiable if:~~

~~(i) The initial aggressor in good faith withdraws from the encounter and effectively communicates to the other person his or her purpose to withdraw from the encounter; and~~

~~(ii) The other person continues or threatens to continue the use of unlawful physical force; or~~

~~(3) The physical force involved is the product of a combat by agreement not authorized by law.~~

(a) As used in this section:



(1) "Business" means a commercial enterprise or establishment owned by a person as all or part of the person's livelihood or is under the person's control, or who is an employee or agent of the commercial enterprise or establishment with responsibility for protecting persons and property that includes the interior and exterior premises of the business;

(2) "Curtilage" means the area surrounding a dwelling that is necessary, convenient, and habitually used for domestic purposes and for those activities associated with the sanctity of a person's home;

(3) "Dwelling" means a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, that has a roof over it, including a tent, and is designed for or capable of being used by people;

(4) "Residence" means a dwelling in which a person resides, either temporarily or permanently, or is visiting as an invited guest, or a dwelling, building or other appurtenance within the curtilage of the residence; and

(5) "Vehicle" means a motorized vehicle that is self-propelled and designed for use on public highways to transport people or property.

(b)(1) A person who is not engaged in unlawful activity and is in a place where the person has a right to be has no duty to retreat before threatening or using physical force against another person when and to the degree the person reasonably believes the physical force is immediately necessary to protect against the other person's use or attempted use of unlawful physical force.

(2) A person who is not engaged in unlawful activity and is in a place where the person has a right to be has no duty to retreat before threatening or using physical force intended or likely to cause death or serious physical injury, if:

(A) The person has a reasonable belief that there is an imminent danger of death or serious physical injury;

(B) The danger creating the belief of imminent death or serious physical injury is real, or honestly believed to be real at the time; and

(C) The belief of danger is founded upon reasonable grounds.

(c) A person using physical force intended or likely to cause death or serious physical injury to another person within a residence, business, dwelling, or vehicle is presumed to have held a reasonable belief of imminent death or serious physical injury to himself or herself, a family member, a member of the household, or a person visiting as an invited guest, when the physical force is used against another person who unlawfully and forcibly is attempting to enter or has unlawfully and forcibly entered the residence, business, dwelling, or vehicle, and the person using defensive physical force knew or had reason to believe that an unlawful and forcible entry was attempted or had occurred.

(d) The presumption established in subsection (c) of this section shall not apply, if:

(1)(A) The person against whom the physical force is used has the right to be in or is a lawful resident of the dwelling, business, residence, or vehicle, such as an owner, lessee, or titleholder.

(B) However, the person is not prohibited from entering the dwelling, business, residence, or occupied vehicle by an order of protection, injunction for protection from domestic abuse, or a court order of no contact against the other person;

(2) The person against whom the physical force is used is attempting to remove a person who is a child or grandchild of, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive physical force is used;

(3) The person using physical force is engaged in an unlawful activity or is using the dwelling, business, residence, or occupied vehicle to further an unlawful activity; or

(4) The person against whom physical force is used is a law enforcement officer who enters or attempts to enter a dwelling, business, residence, or vehicle in the performance of the law enforcement officer's official duties, and the law enforcement officer identified himself or herself in accordance with any applicable law, or the person using physical force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

(e) The threat or use of physical force against another person is not justified:

(1) If the person using physical force consented to the exact physical force used or attempted by the other person;

(2) If the person using physical force provoked the other person's use or attempted use of unlawful physical force, unless:

(A) The person using physical force abandons the encounter or clearly communicates to the other person the intent to do so; and

(B) The other person continues or attempts to use unlawful physical force against the person; or

(3) To resist a halt at a roadblock, arrest, search, or stop and frisk that the person using physical force knows is being made by a law enforcement officer, unless:

(A) The law enforcement officer uses or attempts to use greater physical force than necessary to make the halt at a roadblock, arrest, search, stop and frisk; and

(B) The person using physical force reasonably believes that the physical force is immediately necessary to protect against the law enforcement officer's use or attempted use of greater physical force than necessary.

SECTION 3. Arkansas Code § 5-2-607 is repealed.

~~5-2-607. Use of deadly physical force in defense of a person.~~

~~(a) A person is justified in using deadly physical force upon another person if the person reasonably believes that the other person is:~~

~~(1) Committing or about to commit a felony involving physical force or violence;~~

~~(2) Using or about to use unlawful deadly physical force; or~~

~~(3) Imminently endangering the person's life or imminently about to victimize the person as described in § 9-15-103 from the continuation of a pattern of domestic abuse.~~

~~(b) A person may not use deadly physical force in self-defense if the person knows that he or she can avoid the necessity of using deadly physical force:~~

~~(1)(A) By retreating;~~

~~(B) However, a person is not required to retreat if the person is:~~

~~(i) Unable to retreat with complete safety;~~

~~(ii) In the person's dwelling or on the curtilage surrounding the person's dwelling and was not the original aggressor; or~~

~~(iii) A law enforcement officer or a person assisting at the direction of a law enforcement officer; or~~

~~(2) With complete safety by surrendering possession of property to a person claiming a lawful right to possession of the property.~~

~~(c) As used in this section:~~

~~(1) "Curtilage" means the land adjoining a dwelling that is convenient for residential purposes and habitually used for residential purposes, but not necessarily enclosed, and includes an outbuilding that is directly and intimately connected with the dwelling and in close proximity to the dwelling; and~~

~~(2) "Domestic abuse" means:~~

~~(A) Physical harm, physical injury, assault, or the infliction of fear of imminent physical harm, physical injury, or assault between family or household members; or~~

~~(B) Any sexual conduct between family or household members, whether minors or adults, that constitutes a crime under the laws of this state.~~

SECTION 4. Arkansas Code § 5-2-608(b), concerning the use of physical force in defense of premises, is amended to read as follows:

(b) A person may use deadly physical force under the circumstances set forth in subsection (a) of this section if:

(1) Use of deadly physical force is authorized by ~~§ 5-2-607~~ § 5-2-606; or

(2) The person reasonably believes the use of deadly physical force is necessary to prevent the commission of arson or burglary by a trespasser.

SECTION 5. Arkansas Code § 5-2-615(b) and (c), concerning use of physical force by a pregnant woman in defense of her unborn child, are amended to read as follows:

(b) A pregnant woman is justified in using physical force or deadly physical force against another person to protect her unborn child if, under the circumstances as the pregnant woman reasonably believes them to be, she would be justified under § 5-2-606 ~~or § 5-2-607~~ in using physical force or deadly physical force to protect herself against the unlawful physical force or unlawful deadly physical force she reasonably believes to be threatening her unborn child.

(c) The justification for using physical force or deadly physical force against another person to protect a pregnant woman's unborn child is not available if:

(1) The use of the physical force or deadly physical force for protection was used by a person other than the pregnant woman; or

(2)(A) The use of the deadly physical force for protection would not be allowed under ~~§ 5-2-607(b)~~ § 5-2-606.

(B) However, the pregnant woman is not obligated to retreat or surrender possession of property as described in ~~§ 5-2-607(b)~~ § 5-2-606 unless the pregnant woman knows she can avoid the necessity of using deadly physical force and simultaneously ensure the complete safety of her unborn child.

SECTION 6. Arkansas Code § 16-120-302 is amended to read as follows:
16-120-302. Use of deadly physical force.

(a) A person is immune from civil action for the use of deadly physical force against another person who is an initial aggressor if the use of the deadly physical force was in accordance with ~~§ 5-2-607~~ § 5-2-606.

(b) A court shall award reasonable attorney's fees, costs, and trial-related expenses to a person in defense of a civil action brought by another person if the court finds that the person is immune from civil action as provided in this section."

The Amendment was read _____
By: Representative Pilkington
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Chief Clerk