

State of Arkansas
87th General Assembly
Regular Session, 2009

A Bill

HOUSE BILL 1890

By: Representative English

For An Act To Be Entitled

AN ACT CONCERNING THE USE OF DEADLY PHYSICAL
FORCE IN DEFENSE OF A PERSON TO BE KNOWN AS THE
CASTLE DOCTRINE; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING THE USE OF DEADLY PHYSICAL
FORCE IN DEFENSE OF A PERSON TO BE KNOWN
AS THE CASTLE DOCTRINE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 5-2-607 is amended to read as follows:

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 force or violence;

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

(3)(A) 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) As used in this section, "domestic abuse" means the same as defined in § 9-15-103.

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

~~(1)(A) By retreating.~~



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

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

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

~~(2) By surrendering possession of property to a person claiming a lawful right to possession of the property.~~

If a person uses deadly physical force upon another person, the person is presumed to have reasonably believed the other person was engaging in conduct described in subsection (a) of this section if:

(1) The person against whom the deadly physical force was used:

(A) Was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered:

(i) A dwelling or occupiable structure; or

(ii) The curtilage of a dwelling or occupiable structure; or

(B) Had removed or was attempting to remove another person against that person's will from a dwelling or occupiable structure; and

(2) The person who used deadly physical force knew or reasonably believed that the person against whom deadly physical force was used was engaging or had engaged in conduct described in subdivision (b)(1) of this section.

(c) As used in this section, "curtilage" means the land adjoining a dwelling that is convenient for family purposes and habitually used for family 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.

(d) The presumption set forth in subsection (b) of this section does not apply if:

(1) The person against whom the deadly physical force is used has the right to be in or is a lawful resident of the dwelling or occupiable structure, such as an owner, lessor, lessee, or titleholder, and there is not an order of protection from domestic abuse in effect or a written pretrial supervision order of no contact against that person;

(2) The person removed or sought to be removed is a child,

1 grandchild, or other person who is in the lawful custody or under the lawful
2 guardianship of the person against whom the deadly physical force is used;

3 (3) The person who used deadly physical force is engaged in an
4 unlawful activity of a serious or violent nature or is using the dwelling or
5 occupiable structure to further an unlawful activity of a serious or violent
6 nature;

7 (4) The person against whom the deadly physical force is used is
8 a law enforcement officer who:

9 (A) Enters or attempts to enter a dwelling or occupiable
10 structure in the performance of his or her official duties; and

11 (B) Identifies himself or herself in accordance with
12 applicable law;

13 (5) The person who used deadly physical force knew or reasonably
14 should have known that the person entering or attempting to enter a dwelling
15 or occupiable structure was a law enforcement officer; or

16 (6) The person who used deadly physical force knew or reasonably
17 should have known that the use of deadly physical force was not reasonably
18 necessary to prevent conduct described in subsection (a) of this section.

19 (e) A person who is not engaged in an unlawful activity and who is
20 confronted with conduct described in subsection (a) of this section in any
21 place where he or she has a right to be does not have a duty to retreat and
22 has the right to defend against or prevent conduct described in subsection
23 (a) of this section and meet deadly physical force with deadly physical force
24 under subsection (a) of this section.

25 (f) A person who unlawfully and by force enters or attempts to enter
26 the dwelling or occupiable structure of another person is presumed to be
27 doing so with the purpose to engage in conduct described in subsection (a) of
28 this section.

29 (g) A person who unlawfully and by force enters or attempts to enter a
30 dwelling or occupiable structure in violation of an order of protection,
31 restraining order, or condition of bond is presumed to be doing so with the
32 purpose to engage in conduct described in subsection (a) of this section
33 regardless of whether the person is a resident, owner, lessor, lessee, or
34 titleholder of the dwelling or occupiable structure.

35 (h)(1) A person who uses deadly physical force under circumstances
36 described in subsection (b) or (e) of this section is justified in using the

1 deadly physical force and is immune from criminal prosecution and civil
2 action for the use of the deadly physical force.

3 (2)(A) As used in this section, "criminal prosecution" means
4 arresting, detaining in custody, charging with an offense, or prosecuting a
5 person.

6 (B) A law enforcement agency may use standard procedures
7 for investigating the use of deadly physical force, but the law enforcement
8 agency may not arrest a person for using deadly physical force unless it is
9 determined that there is probable cause to believe the deadly physical force
10 was unlawful.

11 (i) A court shall award reasonable attorney's fees, court costs,
12 compensation for loss of income, and all expenses incurred by a person in
13 defense of any civil action brought by another person if the court finds that
14 the person is immune from civil action as provided in subsection (h) of this
15 section.