

**CHAPTER 192****(SB 38)**

AN ACT relating to general principles of justification.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 503.010 is amended to read as follows:

The following definitions apply in this chapter unless the context otherwise requires:

- (1) "Deadly physical force" means force which is used with the purpose of causing death or serious physical injury or which the defendant knows to create a substantial risk of causing death or serious physical injury.
- (2) "Dwelling" means *a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night*~~[any building or structure, though movable or temporary which is for the time being either totally or partially the defendant's home or place of lodging]~~.
- (3) "Imminent" means impending danger, and, in the context of domestic violence and abuse as defined by KRS 403.720, belief that danger is imminent can be inferred from a past pattern of repeated serious abuse.
- (4) "Physical force" means force used upon or directed toward the body of another person and includes confinement.
- (5) *"Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.*
- (6) *"Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 503 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if:*
  - (a) *The person against whom the defensive force was used was in the process of unlawfully and forcibly entering or had unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and*
  - (b) *The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.*
- (2) *The presumption set forth in subsection (1) does not apply if:*
  - (a) *The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or*
  - (b) *The person sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used; or*
  - (c) *The person who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or*
  - (d) *The person against whom the defensive force is used is a peace officer, as defined in KRS 446.010, who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a peace officer.*

- (3) *A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a felony involving the use of force.*
- (4) *A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.*

Section 3. KRS 503.050 is amended to read as follows:

- (1) The use of physical force by a defendant upon another person is justifiable when the defendant believes that such force is necessary to protect himself against the use or imminent use of unlawful physical force by the other person.
- (2) The use of deadly physical force by a defendant upon another person is justifiable under subsection (1) only when the defendant believes that such force is necessary to protect himself against death, serious physical injury, kidnapping, ~~or~~ sexual intercourse compelled by force or threat, *felony involving the use of force, or under those circumstances permitted pursuant to Section 2 of this Act.*
- (3) Any evidence presented by the defendant to establish the existence of a prior act or acts of domestic violence and abuse as defined in KRS 403.720 by the person against whom the defendant is charged with employing physical force shall be admissible under this section.
- (4) *A person does not have a duty to retreat prior to the use of deadly physical force.*

Section 4. KRS 503.070 is amended to read as follows:

- (1) The use of physical force by a defendant upon another person is justifiable when:
- The defendant believes that such force is necessary to protect a third person against the use or imminent use of unlawful physical force by the other person; and
  - Under the circumstances as the defendant believes them to be, the person whom he seeks to protect would himself have been justified under KRS 503.050 and 503.060 in using such protection.
- (2) The use of deadly physical force by a defendant upon another person is justifiable when:
- The defendant believes that such force is necessary to protect a third person against imminent death, serious physical injury, kidnapping, ~~or~~ sexual intercourse compelled by force or threat, *or other felony involving the use of force, or under those circumstances permitted pursuant to Section 2 of this Act;* and
  - Under the circumstances as they actually exist, the person whom he seeks to protect would himself have been justified under KRS 503.050 and 503.060 in using such protection.
- (3) *A person does not have a duty to retreat if the person is in a place where he or she has a right to be.*

Section 5. KRS 503.080 is amended to read as follows:

- (1) The use of physical force by a defendant upon another person is justifiable when the defendant believes that such force is immediately necessary to prevent:
- The commission of criminal trespass, *robbery,* ~~or~~ burglary, *or other felony involving the use of force, or under those circumstances permitted pursuant to Section 2 of this Act,* in a dwelling, building or upon real property in his possession or in the possession of another person for whose protection he acts; or
  - Theft, criminal mischief, or any trespassory taking of tangible, movable property in his possession or in the possession of another person for whose protection he acts.
- (2) The use of deadly physical force by a defendant upon another person is justifiable under subsection (1) only when the defendant believes that the person against whom such force is used is:
- Attempting to dispossess him of his dwelling otherwise than under a claim of right to its possession; or

- (b) Committing or attempting to commit a burglary, *robbery, or other felony involving the use of force, or under those circumstances permitted pursuant to Section 2 of this Act*, of such dwelling; or
  - (c) Committing or attempting to commit arson of a dwelling or other building in his possession.
- (3) *A person does not have a duty to retreat if the person is in a place where he or she has a right to be.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 503 IS CREATED TO READ AS FOLLOWS:

- (1) *A person who uses force as permitted in Section 2 of this Act and in KRS 503.050, 503.070, and 503.080 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom the force was used is a peace officer, as defined in KRS 446.010, who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law, or the person using force knew or reasonably should have known that the person was a peace officer. As used in this subsection, the term "criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant.*
- (2) *A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (1) of this section, but the agency may not arrest the person for using force unless it determines that there is probable cause that the force that was used was unlawful.*
- (3) *The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (1).*

**Approved April 21, 2006.**