


Church Safety Team


Protecting the Sheep

5: Introduction to Use of Force Laws for Safety Team Member's Response Part 1

Prepared by Bob Soule



WARNING: This training series examines the topic of church attacks and preparedness. Graphic Violence from actual incidents is depicted and discussed for informational and educational purposes in some of these presentations. Children should not view this presentation except when allowed by their parent and/or guardian.




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5: Introduction to Use of Force Laws for Safety Team Member's Response Part 1

In this presentation, you will learn:

- The relevant words and their definitions pertaining to Use of Force in Ohio Revised Code 2901.01.
- Review OH RSC 2901.05 – Burden of Proof, Reasonable Doubt and Self-Defense.
- Use of Non-Deadly Force in Defense of Property.
- Ohio's Requirement in a Self-Defense Claim – Burden of Proof
- The Elements Required in a claim of Self-Defense in a Use of Force.
- The Elements Required in a claim of Self-Defense in a Use of Force Continued – Innocence.
- The Elements Required in a claim of Self-Defense in a Use of Force Continued – Imminence
- About the AOJ Triad which can provide a quick assessment of imminence of an attack.
- A Quick Reference Graphic on the Elements required for a claim of Self-Defense in a Use of Force.



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Pertinent Definition Ohio Jury Instruction CR 421.19 Self-defense against danger of death or great bodily harm

9. "Immediate family" - Immediate family means a person's spouse residing in the person's household, brothers and sisters of the whole or the half blood, and children, including adopted children. ([CR 421.19 Self defense against danger of death or great bodily harm](#))

Pertinent Definitions in Ohio Revised Code 2901.01

1. "Force" means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.
2. "Deadly force" means any force that carries a substantial risk that it will proximately result in the death of any person.
3. "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.
4. "Physical harm to property" means any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. "Physical harm to property" does not include wear and tear occasioned by normal use.



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Pertinent Definitions in Ohio Revised Code 2901.01 Continued

5. "Serious physical harm to persons" means any of the following:

- a. Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
- b. Any physical harm that carries a substantial risk of death;
- c. Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
- d. Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;
- e. Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

6. "Serious physical harm to property" means any physical harm to property that does either of the following:

- a. Results in substantial loss to the value of the property or requires a substantial amount of time, effort, or money to repair or replace;
- b. Temporarily prevents the use or enjoyment of the property or substantially interferes with its use or enjoyment for an extended period of time.

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Ohio Revised Code 2901.05 Burden of Proof, Reasonable Doubt, Self-Defense

A. Every person accused of an offense is presumed innocent until proven guilty beyond a reasonable doubt, and the burden of proof for all elements of the offense is upon the prosecution. The burden of going forward with the evidence of an affirmative defense, and the burden of proof, by a preponderance of the evidence, for an affirmative defense other than self-defense, defense of another, or defense of the accused's residence presented as described in division (B)(1) of this section, is upon the accused.

B. (1) A person is allowed to act in self-defense, defense of another, or defense of that person's residence. If, at the trial of a person who is accused of an offense that involved the person's use of force against another, there is evidence presented that tends to support that the accused person used the force in self-defense, defense of another, or defense of that person's residence, the prosecution must prove beyond a reasonable doubt that the accused person did not use the force in self-defense, defense of another, or defense of that person's residence, as the case may be.

(2) Subject to division (B)(3) of this section, a person is presumed to have acted in self-defense or defense of another when using defensive force that is intended or likely to cause death or great bodily harm to another if the person against whom the defensive force is used is in the process of unlawfully and without privilege to do so entering, or has unlawfully and without privilege to do so entered, the residence or vehicle occupied by the person using the defensive force.

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Ohio Revised Code 2901.05 Burden of Proof, Reasonable Doubt, Self-Defense Continued

B. (3) The presumption set forth in division (B)(2) of this section does not apply if either of the following is true:

- a. The person against whom the defensive force is used has a right to be in, or is a lawful resident of, the residence or vehicle.
- b. The person who uses the defensive force uses it while in a residence or vehicle and the person is unlawfully, and without privilege to be, in that residence or vehicle.
- c. The presumption set forth in division (B)(2) of this section is a rebuttable presumption and may be rebutted by a preponderance of the evidence, provided that the prosecution's burden of proof remains proof beyond a reasonable doubt as described in divisions (A) and (B)(1) of this section.

C. As part of its charge to the jury in a criminal case, the court shall read the definitions of "reasonable doubt" and "proof beyond a reasonable doubt," contained in division (E) of this section.

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Ohio Revised Code 2901.05 Burden of Proof, Reasonable Doubt, Self-Defense Continued

D. As used in this section:

1. An "affirmative defense" is either of the following:
 - a. A defense expressly designated as affirmative;
 - b. A defense involving an excuse or justification peculiarly within the knowledge of the accused, on which the accused can fairly be required to adduce supporting evidence.
2. "Dwelling" means a building or conveyance of any kind that has a roof over it and that is designed to be occupied by people lodging in the building or conveyance at night, regardless of whether the building or conveyance is temporary or permanent or is mobile or immobile. As used in this division, a building or conveyance includes, but is not limited to, an attached porch, and a building or conveyance with a roof over it includes, but is not limited to, a tent.
3. "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as a guest.
4. "Vehicle" means a conveyance of any kind, whether or not motorized, that is designed to transport people or property.

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Ohio Revised Code 2901.05 Burden of Proof, Reasonable Doubt, Self-Defense Continued

E. "Reasonable doubt" is present when the jurors, after they have carefully considered and compared all the evidence, cannot say they are firmly convinced of the truth of the charge. It is a doubt based on reason and common sense. Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt. "Proof beyond a reasonable doubt" is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of the person's own affairs.

Ultimately, if you use force in self-defense and are charged criminally, you will have to show that with a preponderance of the evidence to be able to claim self-defense at trial.

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Use of Non-Deadly Force in Defense of Property

You may use reasonable force in defense of property to protect from trespass; against the imminent use of unlawful force to defend property, and the force used was not likely to cause death or great bodily harm.

Attorney and Author Andrew Branca, whose expertise is in the area of Self-Defense Law urges:

"I urge you to not defend property, unless there is a threat to human life." -- Branca (2017, p. 128)

I fully agree with him on this point.

Ohio Court cases addressing the use of force in defense of property have held:

- "Appellant must present evidence that he reasonably believed that his conduct was necessary to defend his property against the imminent use of unlawful force, and the force used was not likely to cause death or great bodily harm." [State v. Pepin-McCaffrey, 2010 Ohio 617, 929 N.E.2d 476 \(Ohio Ct. App. 2010\)](#)
- "While a person has a right to protect his property from a trespass, and, after warning or notice to the trespasser, use such force as is reasonably necessary so to do, he cannot unlawfully use fire arms [sic] to expel the intruder where he has no reasonable ground to fear the trespasser will do him great bodily harm." [State v. Ludt, 180 Ohio App. 3d 672, 2009 Ohio 416 \(Ohio Ct. App. 2009\)](#)

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Ohio's Requirement in a Self-Defense Claim – Burden of Proof

In Attorney Branca's book; he specifically speaks to the point of "Burden of Proof" Branca (2017, pp. 15–19). Burden of Proof decides which side must produce and argue the evidence of a particular issue.

Burden of Proof has two distinct aspects. They are:

1. Burden of Production.
 - a. To be able to use self-defense before the court, there must be evidence that you were defending yourself or another.
 - b. The requirement for introducing that evidence is your responsibility.
 - c. In a good self-defense use-of-force, there is little difficulty in meeting the burden of production.
 - d. The state has a burden of production to present evidence that you committed the crime you have been indicted for.


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Ohio's Requirement in a Self-Defense Claim – Burden of Proof Continued

2. Burden of Persuasion.
 - a. "For every issue in a trial, one side or the other is responsible to prove (or disprove) that issue to some standard of evidence. In relation to criminal charges, you are innocent until proven the state persuades the jury to the contrary. The prosecution bears the burden of proving you committed the crime beyond a reasonable doubt (except in Ohio)." Branca (2017, p. 17)
 - b. The state has to disprove self-defense beyond a reasonable doubt in forty-nine (49) states, the exception is Ohio.
 - c. In Ohio, you bear the burden of production to get self-defense into the court just like the other states.

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Ohio's Requirement in a Self-Defense Claim – Burden of Proof Continued

2. Burden of Persuasion Continued.
 - d. You also bear the burden of persuasion, to prove self-defense to the legal standard of a preponderance of the evidence.
 - i. This means you must convince the jury that it is more likely than not—50% of the evidence and a bit more—that you defended yourself lawfully.
 - ii. If you fail to meet this burden, the jury will be instructed to reject your claim of self-defense.

Because you, as the defendant; has the burden of persuasion on self-defense in Ohio, a claim of self-defense in this state is far more difficult to uphold than the other forty-nine (49) states.

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Elements Required for the Use of Force in Self Defense Claim

There are five elements required to be present to claim a use of force in self-defense. They are:

1. Innocence.
2. Imminence.
3. Proportionality.
4. Avoidance.
5. Reasonableness.

All five elements must be present in the context of a self-defense claim involving a use-of-force. If one element is missing or is disproven by the state; your entire claim of self-defense collapses. Each element will be briefly discussed in more detail. I strongly urge you to read, Attorney Branca's book listed in the sources and further reading slides at the end of this presentation.

Innocence
Don't Start the Fight
Someone who is the original physical aggressor or a participant in the assault party and cannot justify their use of force as self-defense.

Avoidance
Run if you can!
Some states require a legal duty to retreat, when safety possible, before you may use deadly force in self-defense. Commentators don't all agree on what is the prudent choice of safety possible.

Reasonableness
Good decisions under the circumstances
You don't have to make perfect decisions in self-defense, but you do have to make reasonable decisions. Mistakes, if any, must be reasonable mistakes.

Imminence
Attack in progress!
The threat being defended against must be actually occurring or immediately about to occur. An already completed threat or a speculative future threat does not justify the defensive use of force.

Proportionality
The right tool for the job.
Deadly defensive force may be used only to counter a deadly force threat or the threat of serious bodily, only non-deadly defensive force to be used.

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Elements Required for the Use of Force in Self Defense Claim - Innocence

1. **Innocence** – This means that you were not the aggressor and that you did not start the circumstances that led to the use of force or if you were, you have made clear to the other person your intention to withdraw from the conflict.
 - a. **State v. Ellis, August 9, 2012 (OH 10th Circuit Court of Appeals).**
The Defendant must establish that the other party was the aggressor and that the Defendant did not himself provoke and cause the injury. The defense of self-defense is not available to the person who starts a fight unless, in good faith, he withdraws from the contest and informs the other party of his withdrawal, or by words or acts reasonably indicates that he has withdrawn and is no longer participating in the fight. A Defendant is not in a position to claim self-defense if he sought trouble and armed with a dangerous weapon, he provoked a fight or renewed a fight that had broken off and did not attempt to avoid it or leave the scene of the trouble. State v. Ellis, No. 11AP-939, 5 (Ohio Ct. App. 2012) Link: <https://casetext.com/case/state-v-ellis-336>

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1. **Innocence (Continued)**
 - b. **State v. Deanda, August 25, 2014 (OH 3rd Circuit Court of Appeals).**
To establish a claim of self-defense, the defendant must prove by the greater weight of the evidence, that he was not at fault in creating the situation giving rise to the injuries; and he had reasonable grounds to believe, and an honest belief, even if mistaken, that he was in immediate danger of death or great bodily harm; and, that his only reasonable means of retreat from such danger was by the use of deadly force; and he had not violated—violated any duty to retreat to avoid the danger. State v. Deanda, 17 N.E.3d 1232, 1250 (Ohio Ct. App. 2014) Link: <https://casetext.com/case/state-v-deanda-37>

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Elements Required for the Use of Force in Self Defense Claim – Innocence Continued

1. Innocence Continued

Ohio Jury Instructions Title 4; Chapter CR-421 Defenses; CR 421.19 Self-defense against danger of death or great bodily harm

SELF DEFENSE. The defendant claims to have acted in self-defense. To establish a claim of self-defense, the defendant must prove by the greater weight of the evidence that

- a. he/she was not at fault in creating the situation giving rise to (describe the event in which death or injury occurred); and
- b. he/she had reasonable grounds to believe and an honest belief, even if mistaken, that he/she was in (imminent) danger of death or great bodily harm, and that his/her only reasonable means of (retreat) (escape) (withdrawal) from such danger was by the use of deadly force; and
- c. he/she had not violated any duty to (retreat) (escape) (withdraw) to avoid the danger.

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Elements Required for the Use of Force in Self Defense Claim – Innocence Continued

- a. Without the required element of innocence, there can be no self-defense. A legitimate self-defense claim is available only if you are an innocent party to the confrontation.
- b. If you initiate or sustain a confrontation, your actions cannot be justified as self-defense.
- c. In cases of mutual combat, you are both deemed to be the aggressors of the confrontation and subject to arrest.

Attorney Branca closes his chapter on Innocence with this piece of advice:

"It pays to keep your nose clean, especially if you're really explicit and obvious about it. Play the role of the innocent, live the role of the innocent, and you'll receive enormous dividends should you ever have to argue self-defense." - (Branca, A. (2017). The Law of Self Defense: The Indispensable Guide of the Armed Citizen (3rd ed.); p. 55).

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Elements Required for the Use of Force in Self Defense Claim – Imminence

2. Imminence – An attack is imminent, if it is about to occur right now and must be responded to promptly.

- a. **Black's Law Dictionary** defines **imminent danger** as: Immediate danger, such as be instantly met, such as cannot be guarded against by calling for the assistance of other or the protection of the law...such an appearance of threatened and impending injury as would put a reasonable and prudent man to his instant defense. (Black, H. C. (1979). Black's Law Dictionary (5th ed.). West Publishing Company).
- b. Is there a tool to help you evaluate an incident if you are unable to avoid it as being imminent? The answer is yes. It is called the **AOJ Triad**. (Branca, A. (2017). The Law of Self Defense: The Indispensable Guide of the Armed Citizen (3rd ed.; pg. 58).

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Elements Required for the Use of Force in Self Defense Claim – Imminence Continued

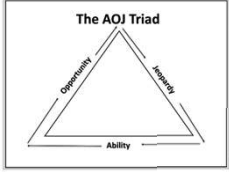
The AOJ Triad has three requirements to it, like a triangle. If you do not have all three legs, the triangle cannot stand. This is the same with the AOJ Triad, if you do not have all three requirements present, you do not have imminence.

Ability – Is your attacker able to hurt you? Ability is not whether the person can use force, but what kind of force they are using.

Opportunity – Can the person's attack get to me?

Jeopardy – Exists when the attacker with the ability and the opportunity intends to use them.

The AOJ Triad is not a formal legal doctrine. It is a useful tool to help you both to identify and to articulate a compelling narrative of a reasonably perceived imminent threat.



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In this presentation, you learned:

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- Ohio's Requirement in a Self-Defense Claim – Burden of Proof
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- The Elements Required in a claim of Self-Defense in a Use of Force Continued – Innocence.
- The Elements Required in a claim of Self-Defense in a Use of Force Continued – Imminence
- About the AOJ Triad which can provide a quick assessment of imminence of an attack.
- A Quick Reference Graphic on the Elements required for a claim of Self-Defense in a Use of Force.

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Questions?

Should you have any questions, you may contact me at:

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The next training series presentation:

5: Introduction to Use of Force Laws for Safety Team Member's Response Part 2

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Sources and Further Reading:

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- ³ Branca, A. (2017). **The Law of Self Defense: The Indispensable Guide of the Armed Citizen** (3rd ed.). PPCT Research Publications.
- ⁴ Grossman, D. (2004). **On Combat: The Psychology and Physiology of Deadly Conflict in War and in Peace** (1st ed.). PPCT Research Publications.
- ⁵ **Mitigating Attacks on Houses of Worship Security Guide**. (2021). Department of Homeland Security. <https://www.cisa.gov/resources-tools/resources/mitigating-attacks-houses-worship-security-guide>
- ⁶ Moloney, K. P. (2023). **Defending the Flock: A Security Guide for Church Safety Directors**. Independently Published.
- ⁷ Murray, R. (2005, November 30). Reality Based Training: Do No Harm. <https://www.lawofficer.com/reality-based-training-do-no-harm/>
- ⁸ Murray, K. (2004). **Training at the Speed of Life: The Definitive Textbook for Military and Law Enforcement Reality Based Training** (1st ed., Vol. 1). Armgier Publications, Inc.
- ⁹ **New American Standard Bible** (The Lockman Foundation, Trans.). (1995). <http://www.lockman.org>
- ¹⁰ Ohio Attorney General. (2022). **Ohio Concealed-Carry Laws and License Application**. Office of the Attorney General. <https://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Law-Enforcement/Concealed-Carry-Publications/Concealed-Carry-Laws-Manual.pdf.aspx>
- ¹¹ Sidle, B. (2008). **Sharpening the Warrior's Edge: The Psychology and Science of Training** (10th ed.). PPCT Research Publications.
- ¹² Ungerleider, S. (2005). **Mental Training for Peak Performance** (2nd ed.). Rodale Books.
- ¹³ Warhol, A., & Christensen, L. (2019). **Deadly Force Encounters: Cops and Citizens Defending Themselves and Others** (2nd ed.). Independently Published.

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Sources and Further Reading Continued:

- ¹⁴ Rensberg, C. (2009, April 22). Is The 21-Foot Rule Still Valid When Dealing With An Edged Weapon? (Part 1). Force Science. <https://www.force-science.com/2009/04/is-the-21-foot-rule-still-valid-when-dealing-with-an-edged-weapon-part-1/>
- ¹⁵ Rensberg, C. (2005, April 29). Is The 21-Foot Rule Still Valid When Dealing with an Edged Weapon? (Part 2). <https://www.force-science.com/2005/04/is-the-21-foot-rule-still-valid-when-dealing-with-an-edged-weapon-part-2/>
- ¹⁶ Lott, J. (2022, October 3). Massive errors in FBI's Active Shooting Reports regarding cases where civilians stop attacks. Crime Prevention Research Center. <https://crimereport.org/2022/10/massive-errors-in-fbis-active-shooting-reports-regarding-cases-where-civilians-stop-attacks-instead-of-4-4-the-correct-number-is-at-least-34-4-in-2021-it-is-at-least-49-1-excluding-gun-free-zon/>
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Ohio Revised Code

Section 2901.01 General provisions definitions.

Effective: October 3, 2023

Legislation: House Bill 33

(A) As used in the Revised Code:

(1) "Force" means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.

(2) "Deadly force" means any force that carries a substantial risk that it will proximately result in the death of any person.

(3) "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

(4) "Physical harm to property" means any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. "Physical harm to property" does not include wear and tear occasioned by normal use.

(5) "Serious physical harm to persons" means any of the following:

(a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;

(b) Any physical harm that carries a substantial risk of death;

(c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

(d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;



(e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

(6) "Serious physical harm to property" means any physical harm to property that does either of the following:

(a) Results in substantial loss to the value of the property or requires a substantial amount of time, effort, or money to repair or replace;

(b) Temporarily prevents the use or enjoyment of the property or substantially interferes with its use or enjoyment for an extended period of time.

(7) "Risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

(8) "Substantial risk" means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.

(9) "Offense of violence" means any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.18, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2905.32, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2917.321, 2919.25, 2921.03, 2921.04, 2921.34, or 2923.161, of division (A)(1) of section 2903.34, of division (A)(1), (2), or (3) of section 2911.12, or of division (B)(1), (2), (3), or (4) of section 2919.22 of the Revised Code or felonious sexual penetration in violation of former section 2907.12 of the Revised Code;

(b) A violation of an existing or former municipal ordinance or law of this or any other state or the United States, substantially equivalent to any section, division, or offense listed in division (A)(9)(a) of this section;

(c) An offense, other than a traffic offense, under an existing or former municipal ordinance or law



of this or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;

(d) A conspiracy or attempt to commit, or complicity in committing, any offense under division (A)(9)(a), (b), or (c) of this section;

(e) A violation of division (C) of section 959.131 of the Revised Code.

(10)(a) "Property" means any property, real or personal, tangible or intangible, and any interest or license in that property. "Property" includes, but is not limited to, cable television service, other telecommunications service, telecommunications devices, information service, computers, data, computer software, financial instruments associated with computers, other documents associated with computers, or copies of the documents, whether in machine or human readable form, trade secrets, trademarks, copyrights, patents, and property protected by a trademark, copyright, or patent. "Financial instruments associated with computers" include, but are not limited to, checks, drafts, warrants, money orders, notes of indebtedness, certificates of deposit, letters of credit, bills of credit or debit cards, financial transaction authorization mechanisms, marketable securities, or any computer system representations of any of them.

(b) As used in division (A)(10) of this section, "trade secret" has the same meaning as in section 1333.61 of the Revised Code, and "telecommunications service" and "information service" have the same meanings as in section 2913.01 of the Revised Code.

(c) As used in divisions (A)(10) and (13) of this section, "cable television service," "computer," "computer software," "computer system," "computer network," "data," and "telecommunications device" have the same meanings as in section 2913.01 of the Revised Code.

(11) "Law enforcement officer" means any of the following:

(a) A sheriff, deputy sheriff, constable, police officer of a township or joint police district, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, or state highway patrol trooper;



- (b) An officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority;
- (c) A mayor, in the mayor's capacity as chief conservator of the peace within the mayor's municipal corporation;
- (d) A member of an auxiliary police force organized by county, township, or municipal law enforcement authorities, within the scope of the member's appointment or commission;
- (e) A person lawfully called pursuant to section 311.07 of the Revised Code to aid a sheriff in keeping the peace, for the purposes and during the time when the person is called;
- (f) A person appointed by a mayor pursuant to section 737.10 of the Revised Code as a special patrolling officer during riot or emergency, for the purposes and during the time when the person is appointed;
- (g) A member of the organized militia of this state or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence;
- (h) A prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor;
- (i) A veterans' home police officer appointed under section 5907.02 of the Revised Code;
- (j) A member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code;
- (k) A special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code;



(l) The house of representatives sergeant at arms if the house of representatives sergeant at arms has arrest authority pursuant to division (E)(1) of section 101.311 of the Revised Code and an assistant house of representatives sergeant at arms;

(m) The senate sergeant at arms and an assistant senate sergeant at arms;

(n) A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended.

(12) "Privilege" means an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity.

(13) "Contraband" means any property that is illegal for a person to acquire or possess under a statute, ordinance, or rule, or that a trier of fact lawfully determines to be illegal to possess by reason of the property's involvement in an offense. "Contraband" includes, but is not limited to, all of the following:

(a) Any controlled substance, as defined in section 3719.01 of the Revised Code, or any device or paraphernalia;

(b) Any unlawful gambling device or paraphernalia;

(c) Any dangerous ordnance or obscene material.

(14) A person is "not guilty by reason of insanity" relative to a charge of an offense only if the person proves, in the manner specified in section 2901.05 of the Revised Code, that at the time of the commission of the offense, the person did not know, as a result of a severe mental disease or defect, the wrongfulness of the person's acts.



(B)(1)(a) Subject to division (B)(2) of this section, as used in any section contained in Title XXIX of the Revised Code that sets forth a criminal offense, "person" includes all of the following:

(i) An individual, corporation, business trust, estate, trust, partnership, and association;

(ii) An unborn human who is viable.

(b) As used in any section contained in Title XXIX of the Revised Code that does not set forth a criminal offense, "person" includes an individual, corporation, business trust, estate, trust, partnership, and association.

(c) As used in division (B)(1)(a) of this section:

(i) "Unborn human" means an individual organism of the species *Homo sapiens* from fertilization until live birth.

(ii) "Viable" means the stage of development of a human fetus at which there is a realistic possibility of maintaining and nourishing of a life outside the womb with or without temporary artificial life-sustaining support.

(2) Notwithstanding division (B)(1)(a) of this section, in no case shall the portion of the definition of the term "person" that is set forth in division (B)(1)(a)(ii) of this section be applied or construed in any section contained in Title XXIX of the Revised Code that sets forth a criminal offense in any of the following manners:

(a) Except as otherwise provided in division (B)(2)(a) of this section, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from performing an abortion with the consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions described in the immediately preceding sentence may be punished as a violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.05, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, 2903.14, 2903.21, or 2903.22 of the Revised Code, as applicable. An abortion that does not violate the



conditions described in the second immediately preceding sentence, but that does violate section 2919.12, division (B) of section 2919.13, or section 2919.15, 2919.151, 2919.17, or 2919.18 of the Revised Code, may be punished as a violation of section 2919.12, division (B) of section 2919.13, or section 2919.15, 2919.151, 2919.17, or 2919.18 of the Revised Code, as applicable. Consent is sufficient under this division if it is of the type otherwise adequate to permit medical treatment to the pregnant woman, even if it does not comply with section 2919.12 of the Revised Code.

(b) In a manner so that the offense is applied or is construed as applying to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in any of the following:

(i) Her delivery of a stillborn baby;

(ii) Her causing, in any other manner, the death in utero of a viable, unborn human that she is carrying;

(iii) Her causing the death of her child who is born alive but who dies from one or more injuries that are sustained while the child is a viable, unborn human;

(iv) Her causing her child who is born alive to sustain one or more injuries while the child is a viable, unborn human;

(v) Her causing, threatening to cause, or attempting to cause, in any other manner, an injury, illness, or other physiological impairment, regardless of its duration or gravity, or a mental illness or condition, regardless of its duration or gravity, to a viable, unborn human that she is carrying.

(C) As used in Title XXIX of the Revised Code:

(1) "School safety zone" consists of a school, school building, school premises, school activity, and school bus.

(2) "School," "school building," and "school premises" have the same meanings as in section 2925.01 of the Revised Code.



(3) "School activity" means any activity held under the auspices of a board of education of a city, local, exempted village, joint vocational, or cooperative education school district; a governing authority of a community school established under Chapter 3314. of the Revised Code; a governing board of an educational service center, or the governing body of a school for which the director of education and workforce prescribes minimum standards under section 3301.07 of the Revised Code.

(4) "School bus" has the same meaning as in section 4511.01 of the Revised Code.



Ohio Revised Code

Section 2901.05 Burden of proof - reasonable doubt - self-defense.

Effective: April 6, 2021

Legislation: Senate Bill 175 - 133rd General Assembly

(A) Every person accused of an offense is presumed innocent until proven guilty beyond a reasonable doubt, and the burden of proof for all elements of the offense is upon the prosecution. The burden of going forward with the evidence of an affirmative defense, and the burden of proof, by a preponderance of the evidence, for an affirmative defense other than self-defense, defense of another, or defense of the accused's residence presented as described in division (B)(1) of this section, is upon the accused.

(B)(1) A person is allowed to act in self-defense, defense of another, or defense of that person's residence. If, at the trial of a person who is accused of an offense that involved the person's use of force against another, there is evidence presented that tends to support that the accused person used the force in self-defense, defense of another, or defense of that person's residence, the prosecution must prove beyond a reasonable doubt that the accused person did not use the force in self-defense, defense of another, or defense of that person's residence, as the case may be.

(2) Subject to division (B)(3) of this section, a person is presumed to have acted in self-defense or defense of another when using defensive force that is intended or likely to cause death or great bodily harm to another if the person against whom the defensive force is used is in the process of unlawfully and without privilege to do so entering, or has unlawfully and without privilege to do so entered, the residence or vehicle occupied by the person using the defensive force.

(3) The presumption set forth in division (B)(2) of this section does not apply if either of the following is true:

(a) The person against whom the defensive force is used has a right to be in, or is a lawful resident of, the residence or vehicle.

(b) The person who uses the defensive force uses it while in a residence or vehicle and the person is unlawfully, and without privilege to be, in that residence or vehicle.



(4) The presumption set forth in division (B)(2) of this section is a rebuttable presumption and may be rebutted by a preponderance of the evidence, provided that the prosecution's burden of proof remains proof beyond a reasonable doubt as described in divisions (A) and (B)(1) of this section.

(C) As part of its charge to the jury in a criminal case, the court shall read the definitions of "reasonable doubt" and "proof beyond a reasonable doubt," contained in division (E) of this section.

(D) As used in this section:

(1) An "affirmative defense" is either of the following:

(a) A defense expressly designated as affirmative;

(b) A defense involving an excuse or justification peculiarly within the knowledge of the accused, on which the accused can fairly be required to adduce supporting evidence.

(2) "Dwelling" means a building or conveyance of any kind that has a roof over it and that is designed to be occupied by people lodging in the building or conveyance at night, regardless of whether the building or conveyance is temporary or permanent or is mobile or immobile. As used in this division, a building or conveyance includes, but is not limited to, an attached porch, and a building or conveyance with a roof over it includes, but is not limited to, a tent.

(3) "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as a guest.

(4) "Vehicle" means a conveyance of any kind, whether or not motorized, that is designed to transport people or property.

(E) "Reasonable doubt" is present when the jurors, after they have carefully considered and compared all the evidence, cannot say they are firmly convinced of the truth of the charge. It is a doubt based on reason and common sense. Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or



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imaginary doubt. "Proof beyond a reasonable doubt" is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of the person's own affairs.

The Five Elements of Self-Defense

Handout

