


Church Safety Team


Protecting the Sheep

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

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.




Church Safety Team
Protecting the Sheep

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

In this presentation, you will:

- Learn the third Element Required in a claim of Self-Defense in a Use of Force - Proportionality.
- Learn the fourth Element Required in a claim of Self-Defense in a Use of Force – Avoidance.
- Learn the fifth Element Required in a claim of Self-Defense in a Use of Force - Reasonableness
- Review a Quick Reference Graphic on the Elements required for a claim of Self-Defense in a Use of Force.
- Learn the best fight is the one you avoid.
- Learn about Civil Immunity in Ohio.
- Review Ohio Revised Code 2305.40.
- Review Ohio Revised Code 2307.60.



Slide 5.2-2

Church Safety Team
Protecting the Sheep

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

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

Proportionality – pertains to the degree of force you use to defend yourself must be proportionate to the degree of force used by your attacker/s. Any degree beyond that is excessive and unlawful.


Deadly Force includes force likely to cause death or serious bodily injury.

Non-deadly Force – is any physical force that doesn't meet the "death or serious bodily injury" threshold.

You must be able to adjust or adapt your response to the changing circumstances of the attack.

A **use of force** can be excessive if you respond with deadly force in a non-deadly force attack on you.

A **use of force** can also be **excessive in duration** after the attacking force has stopped being a danger, and you continue to use force against them.



Slide 5.2-3


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

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

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

13. EXCESSIVE FORCE (ADDITIONAL). A person is allowed to use force that is reasonably necessary under the circumstances to protect himself/herself from an apparent danger. If the defendant used more force than reasonably necessary and if the force used is greatly disproportionate to the apparent danger, then the defense of (self-defense) (defense of another) is not available.

It is prudent to arm yourself with both deadly force and non-deadly force (nonlethal) weapons.



Slide 5.2-4

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

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

Avoidance – is taking the advantage of a safe avenue of retreat before resorting to the use of force against an attacker (This is always the best choice if possible.).


On April 6, 2021, enacted legislation by the Ohio General Assembly eliminated the duty to retreat. **A defendant has no duty to retreat from any place where he or she is lawfully permitted to be.** This is outlined in Ohio Revised Code 2901.09 below:

ORC Section 2901.09 No duty to retreat in residence or vehicle.

(A) As used in this section, "residence" has the same meaning as in section 2901.05 of the Revised Code.

(B) For purposes of any section of the Revised Code that sets forth a criminal offense, **a person has no duty to retreat before using force in self-defense, defense of another, or defense of that person's residence if that person is in a place in which the person lawfully has a right to be.**

(C) A trier of fact shall not consider the possibility of retreat as a factor in determining whether or not a person who used force in self-defense, defense of another, or defense of that person's residence reasonably believed that the force was necessary to prevent injury, loss, or risk to life or safety.



Slide 5.2-5

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

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


Reasonableness – covers each of the other four elements. Everything you do in self-defense, your perceptions, your decisions, and your actions must be reasonable. (Branca, A. (2017). The Law of Self Defense: The Indispensable Guide of the Armed Citizen (3rd ed.; pg. 101)

Two legal frameworks can be applied to a defense of others analysis; (1) the reasonable perception framework and (2) the alter ego framework.

Under the **reasonable perception framework**, your right to use force in another person's defense is no greater than **your** right to use force in your own defense.

Under the **alter ego framework**, your right to use force in defense is no greater than their right to use force in **their** own defense.

Attorney Branca advises: "Extreme caution when defending strangers—especially with lethal force—even in jurisdictions that don't distinguish between self-defense and defense of others. Unless the person you're defending is someone you know very well, there is a risk you don't know the whole story." Branca (2017, p. 122)



Slide 5.2-6

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

Ohio Civil Immunity


Ohio has provisions for civil, but not criminal immunity

Ohio Revised Code Section 2305.40 Owner, lessee, or renter of real property not liable to trespasser.

and

Ohio Revised Code Section 2307.60 Civil action for damages for criminal act.

These two statutes are included in your notes package.



Slide 5.2-10

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

Civil Immunity Continued

Ohio Revised Code Section 2305.40 Owner, lessee, or renter of real property not liable to trespasser.

Property Owner and resident family are not liable for injuries to a trespasser if:


1. The defender is inside the building AND
2. The trespasser was attempting to make or made an unlawful entry into the building; AND
3. The defender used only "reasonable necessary force" to stop the trespasser.

"Reasonably Necessary Force" includes deadly force only if the defender has a reasonable, even if mistaken, good faith belief that the defender or the defender's family faced a deadly force threat from the intruder.

- This is really a "Defense of Person/s" scenario.
- The defender is not required to retreat.
 - For example, under the Castle Doctrine.

Section 2305.40 (D)(4)

- This section does not affect **any criminal liability** that the owner, lessee, or renter of real property or a member of the owner's, lessee's, or renter's family who resides on the property may have for injury, death, or loss to person or property of a trespasser, invitee, or licensee on the property.



Slide 5.2-11


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

Civil Immunity Continued

Section 2307.60 Civil action for damages for criminal act.

Recovery by the attacker or attacker's family is barred if any of the following is present:

1. The injured attacker is convicted and/or pleaded guilty to a felony or a misdemeanor of violence arising from the conduct that was the proximate cause of the injury.
2. The injured attacker engaged in the proximate conduct that would constitute a felony or a misdemeanor of violence, if prosecuted.
3. The injured person suffered the harm because they were associated with the proximate conduct, if such conduct would constitute a felony or a misdemeanor of violence if prosecuted.
 - a. Unless the injured person is **an innocent bystander** with no connection to the underlying proximate conduct.
 - b. This section also applies to those that are cooperating with the attacker and are **not innocent**.



Slide 5.2-12

Church Safety Team
Protecting the Sheep

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

Civil Immunity Continued


Section 2307.60 Civil action for damages for criminal act.

Section 2307.60 (A)(1) Civil action for damages for criminal act.

- Anyone injured in person or property by a criminal act has, and may recover full damages in, a civil action unless specifically excepted by law, may recover the costs of maintaining the civil action and attorney's fees....

This section also provides that "anyone injured in person or property by a criminal act" can sue in civil court, and may recover full damages, unless such an action is specifically prohibited by law. (While some criminal statutes expressly provide for a civil remedy, R.C. 2307.60 is written broadly enough to cover just about any Ohio state- or local-law criminal violation.) And if allowed elsewhere in the law, a plaintiff may also recover attorneys' fees and punitive or exemplary damages in the same suit.

Importantly, when a defendant has been convicted of a violent crime punishable by more than a year's imprisonment, the statute prevents him from later denying, in a civil action brought under R.C. 2307.60, any fact essential to that conviction (unless he can demonstrate extraordinary circumstances).



Slide 5.2-13

Church Safety Team
Protecting the Sheep

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

In this presentation, you:

- Learned the third Element Required in a claim of Self-Defense in a Use of Force - Proportionality.
- Learned the fourth Element Required in a claim of Self-Defense in a Use of Force – Avoidance.
- Learned the fifth Element Required in a claim of Self-Defense in a Use of Force - Reasonableness
- Reviewed a Quick Reference Graphic on the Elements required for a claim of Self-Defense in a Use of Force.
- Learned the best fight is the one you avoid.
- Learned about Civil Immunity in Ohio.
- Reviewed Ohio Revised Code 2305.40.
- Reviewed Ohio Revised Code 2307.60.


Slide 5.2-14

Church Safety Team
Protecting the Sheep


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

Questions?

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

Email: jatop1@rsoule.us

Bob Soule



Slide 5.2-15

Church Safety Team
Protecting the Sheep

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

The next training series presentation:

5: Introduction to Use of Force Laws for Safety Team Member's Response Part 3



Slide 5.2-16

Church Safety Team
Protecting the Sheep

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

Sources and Further Reading Continued:

¹ Asken, M., & Grossman, D. (2010). *Warrior Mindset: Mental Toughness Skills for a Nation's Peacekeepers* (1st ed.). Human Factor Research Group.

² Black, H. C. (1979). *Black's Law Dictionary* (5th ed.). West Publishing Company.

³ Branca, A. (2017). *The Law of Self Defense: The Indispensable Guide of the Armed Citizen* (3rd ed.).

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]. Armiger 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](https://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Law-Enforcement/Concealed-Carry-Publications/Concealed-Carry-Laws-Manual-[PDF].aspx)

¹¹ Siddle, B. (2008). *Sharpening the Warrior's Edge: The Psychology and Science of Training* (10th ed.). PPCT Research Publications.

¹² *Lungefelder, 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.



Slide 5.2-17

Church Safety Team
Protecting the Sheep

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

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://crimeresearch.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/>

¹⁷ Hoyt, D. B., Biden, J. R., Obama, B., Warshaw, A. L., Jacobs, L. M., Woodson, J., Brinsfield, K. H., Mitchell, E., Joint Committee to Create a National Policy to Enhance Survivability from Mass Casualty Shooting Events, Burns, K. J., McSwain, N., Carver, W., Fabbri, W. P., Carmona, R. H., Eastman, A. L., Butler, F. K., Holcomb, J. B., Rhee, P., Levy, M. J., ... Jacobs, L. M. (2015). Improving Survival Do Something: Strategies to Enhance survival in active shooter and intentional mass casualty Events: A compendium. In *Bulletin of the American College of Surgeons* (Vol. 100, Issue 1). <https://www.stophthebleed.org/media/xt0hwrm/hartford-consensus-compendium.pdf>

¹⁸ Spaulding, D. (2011). *Handgun Combatives*. Looseleaf Law Publications.



Slide 5.2-18



Ohio Revised Code

Section 2901.09 No duty to retreat in residence or vehicle.

Effective: April 6, 2021

Legislation: Senate Bill 175 - 133rd General Assembly

(A) As used in this section, "residence" has the same meaning as in section 2901.05 of the Revised Code.

(B) For purposes of any section of the Revised Code that sets forth a criminal offense, a person has no duty to retreat before using force in self-defense, defense of another, or defense of that person's residence if that person is in a place in which the person lawfully has a right to be.

(C) A trier of fact shall not consider the possibility of retreat as a factor in determining whether or not a person who used force in self-defense, defense of another, or defense of that person's residence reasonably believed that the force was necessary to prevent injury, loss, or risk to life or safety.

OJI-CR 421.23 Self-defense/Defense of another—tests for reasonableness.

1. WORDS. Words alone do not justify the use of (deadly force) (force). Resort to such force is not justified by abusive language, verbal threats, or other words, no matter how provocative.

2. TESTS FOR REASONABLENESS.

(A) SELF DEFENSE. In deciding whether the defendant had reasonable grounds to believe and an honest belief that he/she was in (imminent) (immediate) danger of (death or great bodily harm) (bodily harm), you must put yourself in the position of the defendant, with his/her characteristics, his/her knowledge or lack of knowledge, and under the circumstances and conditions that surrounded him/her at the time. You must consider the conduct of (insert name of assailant) and decide whether his/her acts and words caused the defendant reasonably and honestly to believe that he/she was about to (be killed or receive great bodily harm) (receive bodily harm).

(B) DEFENSE OF ANOTHER. In deciding whether the defendant had reasonable grounds to believe and an honest belief that (name of person defended) was in (imminent) (immediate) danger of (death or great bodily harm) (bodily harm), you must put yourself in the position of the defendant, with his/her characteristics, his/her knowledge of lack of knowledge, and under the circumstances and conditions that surrounded him/her at the time. You must consider the conduct of (insert name of assailant) and decide whether his/her acts and words caused the defendant reasonably and honestly to believe that (name of person defended) was about to (be killed or receive great bodily harm) (receive bodily harm).

3. EXCESSIVE FORCE. If the defendant used more force than reasonably necessary and if the force used is greatly disproportionate to the apparent danger, then the defense of (self-defense) (defense of another) is not available.

<https://lawofselfdefense.com/jury-instruction/oji-cr-421-23-self-defensedefense-of-another-tests-for-reasonableness/>



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



AUTHENTICATED,
OHIO LEGISLATIVE SERVICE
COMMISSION
DOCUMENT #238949

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.



Ohio Revised Code

Section 2305.40 Owner, lessee, or renter of real property not liable to trespasser.

Effective: March 18, 1997

Legislation: House Bill 447 - 121st General Assembly

(A) As used in this section:

(1) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.

(2) "Tort action" means a civil action for damages for injury, death, or loss to person or property other than a civil action for damages for a breach of contract or another agreement between persons.

(3) "Vehicle" has the same meaning as in section 4501.01 of the Revised Code.

(B)(1) The owner, lessee, or renter of real property or a member of the owner's, lessee's, or renter's family who resides on the property is not liable in damages to a trespasser on the property, to a member of the family of the trespasser, or to any other person in a tort action for injury, death, or loss to person or property of the trespasser that allegedly is caused by the owner, lessee, renter, or family member if, at the time the injury, death, or loss to person or property allegedly is caused, all of the following apply:

(a) The owner, lessee, renter, or family member is inside a building or other structure on the property that is maintained as a permanent or temporary dwelling;

(b) The trespasser has made, is making, or is attempting to make an unlawful entry into the building or other structure described in division (B)(1)(a) of this section;

(c) The owner, lessee, renter, or family member uses reasonably necessary force to repel the trespasser from the building or other structure described in division (B)(1)(a) of this section or to prevent the trespasser from making the unlawful entry into that building or other structure.

(2) For purposes of the immunity created by division (B)(1) of this section, reasonably necessary force to repel a trespasser from a building or other structure that is maintained as a permanent or



temporary dwelling or to prevent a trespasser from making an unlawful entry into a building or other structure of that nature may include the taking of or attempting to take the trespasser's life, or causing or attempting to cause physical harm or serious physical harm to the person of the trespasser, if the owner, lessee, or renter of real property or a member of the owner's, lessee's, or renter's family who resides on the property has a reasonable good faith belief that the owner, lessee, or renter or a member of the owner's, lessee's, or renter's family is in imminent danger of death or serious physical harm to person and that the only means to escape from the imminent danger is to use deadly force or other force that likely will cause physical harm or serious physical harm to the person of the trespasser, even if the owner, lessee, renter, or family member is mistaken as to the existence or imminence of the danger of death or serious physical harm to person.

(3) In order to qualify for the immunity created by division (B)(1) of this section, an owner, lessee, or renter of real property or a member of the owner's, lessee's, or renter's family who resides on the property is not required to retreat from a building or other structure that is maintained as a permanent or temporary dwelling prior to using reasonably necessary force to repel a trespasser from the building or other structure or to prevent a trespasser from making an unlawful entry into the building or other structure.

(C) The owner, lessee, or renter of real property or a member of the owner's, lessee's, or renter's family who resides on the property is not liable in damages to a trespasser on the property, to a member of the family of the trespasser, or to any other person in a tort action for injury, death, or loss to person or property of the trespasser that allegedly is caused by the owner, lessee, renter, or family member under circumstances not covered by division (B)(1) of this section if, at the time the injury, death, or loss to person or property allegedly is caused, none of the following applies:

(1) The injury, death, or loss to person or property is caused by a physical assault of the owner, lessee, renter, or family member upon the trespasser other than in self-defense or defense of a third person.

(2) Self-defense or defense of a third person is not involved, and the injury, death, or loss to person or property is caused by a vehicle driven or otherwise set in motion, a firearm shot, or any other item of tangible personal property held, driven, set in motion, projected, or thrown by the owner, lessee, renter, or family member with the intent to cause injury, death, or loss to person or property of the



trespasser or with the intent to cause the trespasser to believe that the owner, lessee, renter, or family member would cause injury, death, or loss to person or property of the trespasser.

(3) Under circumstances not described in division (C)(1) or (2) of this section, self-defense or defense of a third person is not involved, and the owner, lessee, renter, or family member intends to create a risk of injury, death, or loss to person or property of any trespasser by direct or indirect means, including, but not limited to, the use of spring guns, traps, or other dangerous instrumentalities.

(D)(1) This section does not create a new cause of action or substantive legal right against the owner, lessee, or renter of real property or a member of the owner's, lessee's, or renter's family who resides on the property.

(2) This section does not affect any civil liability under another section of the Revised Code or the common law of this state of an owner, lessee, or renter of real property or a member of the owner's, lessee's, or renter's family who resides on the property with respect to individuals other than trespassers, including, but not limited to, civil liability to invitees or licensees.

(3) This section does not affect any immunities from or defenses to civil liability established by another section of the Revised Code or available at common law to which the owner, lessee, or renter of real property or a member of the owner's, lessee's, or renter's family who resides on the property may be entitled with respect to individuals other than trespassers, including, but not limited to, immunities from or defenses to civil liability to invitees or licensees.

(4) This section does not affect any criminal liability that the owner, lessee, or renter of real property or a member of the owner's, lessee's, or renter's family who resides on the property may have for injury, death, or loss to person or property of a trespasser, invitee, or licensee on the property.

(5) This section does not affect any immunities from or defenses to civil liability established by another section of the Revised Code or available at common law to which an individual other than the owner, lessee, or renter of real property or a member of the owner's, lessee's, or renter's family who resides on the property may be entitled in connection with injury, death, or loss to person or property of a trespasser on real property owned, leased, or rented by another person, including, but



AUTHENTICATED,
OHIO LEGISLATIVE SERVICE
COMMISSION
DOCUMENT #226009

not limited to, self-defense or defense of third persons.



Ohio Revised Code

Section 2307.60 Civil action for damages for criminal act.

Effective: September 9, 2008

Legislation: Senate Bill 184 - 127th General Assembly

(A)(1) Anyone injured in person or property by a criminal act has, and may recover full damages in, a civil action unless specifically excepted by law, may recover the costs of maintaining the civil action and attorney's fees if authorized by any provision of the Rules of Civil Procedure or another section of the Revised Code or under the common law of this state, and may recover punitive or exemplary damages if authorized by section 2315.21 or another section of the Revised Code.

(2) A final judgment of a trial court that has not been reversed on appeal or otherwise set aside, nullified, or vacated, entered after a trial or upon a plea of guilty, but not upon a plea of no contest or the equivalent plea from another jurisdiction, that adjudges an offender guilty of an offense of violence punishable by death or imprisonment in excess of one year, when entered as evidence in any subsequent civil proceeding based on the criminal act, shall preclude the offender from denying in the subsequent civil proceeding any fact essential to sustaining that judgment, unless the offender can demonstrate that extraordinary circumstances prevented the offender from having a full and fair opportunity to litigate the issue in the criminal proceeding or other extraordinary circumstances justify affording the offender an opportunity to relitigate the issue. The offender may introduce evidence of the offender's pending appeal of the final judgment of the trial court, if applicable, and the court may consider that evidence in determining the liability of the offender.

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

(a) "Tort action" means a civil action for damages for injury, death, or loss to person or property other than a civil action for damages for a breach of contract or another agreement between persons. "Tort action" includes, but is not limited to, a product liability claim, as defined in section 2307.71 of the Revised Code, and an asbestos claim, as defined in section 2307.91 of the Revised Code, an action for wrongful death under Chapter 2125. of the Revised Code, and an action based on derivative claims for relief.

(b) "Residence" has the same meaning as in section 2901.05 of the Revised Code.



(2) Recovery on a claim for relief in a tort action is barred to any person or the person's legal representative if any of the following apply:

(a) The person has been convicted of or has pleaded guilty to a felony, or to a misdemeanor that is an offense of violence, arising out of criminal conduct that was a proximate cause of the injury or loss for which relief is claimed in the tort action.

(b) The person engaged in conduct that, if prosecuted, would constitute a felony, a misdemeanor that is an offense of violence, an attempt to commit a felony, or an attempt to commit a misdemeanor that is an offense of violence and that conduct was a proximate cause of the injury or loss for which relief is claimed in the tort action, regardless of whether the person has been convicted of or pleaded guilty to or has been charged with committing the felony, the misdemeanor, or the attempt to commit the felony or misdemeanor.

(c) The person suffered the injury or loss for which relief is claimed in the tort action as a proximate result of the victim of conduct that, if prosecuted, would constitute a felony, a misdemeanor that is an offense of violence, an attempt to commit a felony, or an attempt to commit a misdemeanor that is an offense of violence acting against the person in self-defense, defense of another, or defense of the victim's residence, regardless of whether the person has been convicted of or pleaded guilty to or has been charged with committing the felony, the misdemeanor, or the attempt to commit the felony or misdemeanor. Division (B)(2)(c) of this section does not apply if the person who suffered the injury or loss, at the time of the victim's act of self-defense, defense of another, or defense of residence, was an innocent bystander who had no connection with the underlying conduct that prompted the victim's exercise of self-defense, defense of another, or defense of residence.

(3) Recovery against a victim of conduct that, if prosecuted, would constitute a felony, a misdemeanor that is an offense of violence, an attempt to commit a felony, or an attempt to commit a misdemeanor that is an offense of violence, on a claim for relief in a tort action is barred to any person or the person's legal representative if conduct the person engaged in against that victim was a proximate cause of the injury or loss for which relief is claimed in the tort action and that conduct, if prosecuted, would constitute a felony, a misdemeanor that is an offense of violence, an attempt to commit a felony, or an attempt to commit a misdemeanor that is an offense of violence,



regardless of whether the person has been convicted of or pleaded guilty to or has been charged with committing the felony, the misdemeanor, or the attempt to commit the felony or misdemeanor.

(4) Divisions (B)(1) to (3) of this section do not apply to civil claims based upon alleged intentionally tortious conduct, alleged violations of the United States Constitution, or alleged violations of statutes of the United States pertaining to civil rights. For purposes of division (B)(4) of this section, a person's act of self-defense, defense of another, or defense of the person's residence does not constitute intentionally tortious conduct.