

HOUSE BILL No. 5143

September 7, 2005, Introduced by Rep. Jones and referred to the Committee on Judiciary.

A bill to clarify the rights and duties of self-defense and the defense of others; to provide for criminal and civil immunity under certain circumstances; to regulate the investigation of incidents involving self-defense or the defense of others; and to provide for certain remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) A person is presumed to have held a reasonable
2 fear of imminent peril of death or great bodily harm to himself or
3 herself or another when using defensive force that is intended or
4 likely to cause death or great bodily harm to another if both of
5 the following apply:

6 (a) The person against whom the defensive force was used was

1 in the process of unlawfully and forcibly entering, or had
2 unlawfully and forcibly entered, a dwelling, residence, or occupied
3 vehicle, or that person had removed or was attempting to remove
4 another person against that person's will from the dwelling,
5 residence, or occupied vehicle.

6 (b) The person who uses defensive force knew or had reason to
7 believe that an unlawful and forcible entry or unlawful and
8 forcible act was occurring or had occurred.

9 (2) The presumption set forth in subsection (1) does not apply
10 if any of the following apply:

11 (a) The person against whom the defensive force is used has
12 the right to be in or is a lawful resident of the dwelling,
13 residence, or vehicle, such as an owner, lessee, or titleholder,
14 and there is not an injunction for protection from domestic
15 violence or a written pretrial supervision order of no contact
16 against that person.

17 (b) The person sought to be removed is a child or grandchild
18 of, or is otherwise in the lawful custody or under the lawful
19 guardianship of, the person against whom the defensive force is
20 used.

21 (c) The person who uses defensive force is engaged in an
22 unlawful activity or is using the dwelling, residence, or occupied
23 vehicle to further an unlawful activity.

24 (d) The person against whom the defensive force is used is a
25 law enforcement officer who enters or attempts to enter a dwelling,
26 residence, or vehicle in the performance of his or her official
27 duties and the officer identified himself or herself in accordance

1 with applicable law or the person using force knew or reasonably
2 should have known that the person entering or attempting to enter
3 was a law enforcement officer.

4 (3) A person who is not engaged in an unlawful activity and
5 who is attacked in any other place where he or she has a right to
6 be has no duty to retreat and has the right to stand his or her
7 ground and meet force with force, including deadly force if he or
8 she reasonably believes it is necessary to do so to prevent death
9 or great bodily harm to himself or herself or to another person or
10 to prevent the commission of a forcible felony.

11 (4) A person who unlawfully and by force enters or attempts to
12 enter a person's dwelling, residence, or occupied vehicle is
13 presumed to be doing so with the intent to commit an unlawful act
14 involving force or violence.

15 (5) As used in this section:

16 (a) "Dwelling" means a building or conveyance of any kind,
17 including any attached porch, whether the building or conveyance is
18 temporary or permanent, mobile or immobile, that has a roof over
19 it, including a tent, and that is designed to be occupied by
20 people.

21 (b) "Residence" means a dwelling in which a person resides
22 either temporarily or permanently or is visiting as an invited
23 guest.

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

26 Sec. 2. (1) A person is justified in using force, except
27 deadly force, against another person when and to the extent that

1 the person reasonably believes that the conduct is necessary to
2 defend himself or herself or another against the other's imminent
3 use of unlawful force.

4 (2) A person is justified in the use of deadly force and does
5 not have a duty under this section to retreat if either of the
6 following applies:

7 (a) He or she reasonably believes that such force is necessary
8 to prevent imminent death or great bodily harm to himself or
9 herself or another or to prevent the imminent commission of a
10 forcible felony.

11 (b) Any of the circumstances enumerated under section 1.

12 Sec. 3. (1) A person is justified in the use of force, except
13 deadly force, against another when and to the extent that the
14 person reasonably believes that the use of force is necessary to
15 prevent or terminate the other person's trespass on or other
16 tortious or criminal interference with real property, other than a
17 dwelling or personal property, that is lawfully in his or her
18 possession or in the possession of another person who is a member
19 of his or her immediate family or household, or of a person whose
20 property he or she has a legal duty to protect.

21 (2) A person is justified in the use of deadly force only if
22 he or she reasonably believes that deadly force is necessary to
23 prevent the imminent commission of a forcible felony. A person does
24 not have a duty under this section to retreat if the person is in a
25 place where he or she has a right to be.

26 Sec. 4. (1) A person who uses force as permitted in section 1,
27 2, or 3 is justified in using that force and is immune from

1 criminal prosecution and from any civil action for the use of that
2 force, unless the person against whom force was used is a law
3 enforcement officer who was acting in the performance of his or her
4 official duties and the officer identified himself or herself in
5 accordance with any applicable law or the person using force knew
6 or reasonably should have known that the person was a law
7 enforcement officer. As used in this subsection, "criminal
8 prosecution" includes arresting, detaining in custody, charging, or
9 prosecuting the defendant.

10 (2) A law enforcement agency may use standard procedures for
11 investigating the use of force as described in subsection (1), but
12 the agency shall not arrest the person for using force unless it
13 determines that there is probable cause that the force that was
14 used was unlawful.

15 (3) The court shall award reasonable attorney fees, court
16 costs, compensation for loss of income, and all expenses incurred
17 by the defendant in defense of any civil action brought by a
18 plaintiff if the court finds that the defendant is immune from
19 prosecution as provided in subsection (1).