

As Amended by House Committee

Session of 2006

HOUSE BILL No. 2577

By Representative Carlson

1-6

10 AN ACT concerning crimes; relating to justified use of force; amending
11 K.S.A. 21-3211, 21-3212 and 21-3213 and repealing the existing
12 sections.

13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. (a) For purposes of K.S.A. 21-3211, 21-3212 and 21-
16 3213, and amendments thereto, a person is presumed to have held a
17 reasonable fear of imminent death or great bodily harm to such person's
18 self or another if:

19 (1) The person against whom deadly force was used was ~~in the pro-~~
20 ~~cess of~~ unlawfully and forcibly entering, or had unlawfully and forcibly
21 entered, a dwelling or occupied vehicle, or if the person against whom
22 such force was used had removed or was attempting to remove another
23 against such other's will from the dwelling or occupied vehicle; and

24 (2) the person who used deadly force knew or had reason to believe
25 that an unlawful and forcible entry or unlawful and forcible removal was
26 occurring or had occurred.

27 (b) The presumption set forth in subsection (a) shall not apply if:

28 (1) The person against whom deadly force is used has the right to be
29 in or is a lawful resident of the dwelling or vehicle, such as an owner,
30 lessee or titleholder, and there is not a court order restraining or barring
31 such person from contact with a person occupying the dwelling or vehicle;

32 (2) the person sought to be removed from the dwelling or occupied
33 vehicle is a child or grandchild, or is otherwise in the lawful custody or
34 under the lawful guardianship, of the person against whom deadly force
35 is used and there is not a court order restraining or barring the person
36 against whom such force is used from contact with such child or
37 grandchild;

38 (3) the person who uses deadly force is engaged in an unlawful ac-
39 tivity or is using the dwelling or occupied vehicle to further an unlawful
40 activity; or

41 (4) the person against whom deadly force is used is a law enforcement
42 officer who enters or attempts to enter a dwelling or vehicle in the per-
43 formance of the officer's official duties and (A) the officer identified the

1 officer's self in accordance with any applicable law or (B) the person using
2 deadly force knew or reasonably should have known that the person en-
3 tering or attempting to enter was a law enforcement officer.

4 (c) A person who unlawfully and forcibly enters or attempts to enter
5 a dwelling or occupied vehicle is presumed to do so with intent to commit
6 an unlawful act involving force or violence.

7 (d) As used in this section and K.S.A. 21-3211, 21-3212 and 21-3213,
8 and amendments thereto, "vehicle" has the meaning provided by K.S.A.
9 8-126, and amendments thereto.

10 (e) This section shall be part of and supplemental to the Kansas crim-
11 inal code.

12 New Sec. 2. (a) A person who is not engaged in an unlawful activity
13 and who is attacked in a place where such person has a right to be has
14 no duty to retreat and has the right to stand such person's ground and
15 meet force with force.

16 (b) This section shall be part of and supplemental to the Kansas crim-
17 inal code.

18 New Sec. 3. (a) A person who uses force which, subject to the pro-
19 visions of K.S.A. 21-3214, and amendments thereto, is justified pursuant
20 to K.S.A. 21-3211, 21-3212 or 21-3213, and amendments thereto, is im-
21 mune from criminal prosecution and civil action for the use of such force,
22 unless the person against whom force was used is a law enforcement
23 officer who was acting in the performance of such officer's official duties
24 and the officer identified the officer's self in accordance with any appli-
25 cable law or the person using force knew or reasonably should have known
26 that the person was a law enforcement officer. As used in this subsection,
27 "criminal prosecution" includes arrest, detention in custody and charging
28 or prosecution of the defendant.

29 (b) A law enforcement agency may use standard procedures for in-
30 vestigating the use of force as described in subsection (a), but the agency
31 shall not arrest the person for using force unless it determines that there
32 is probable cause ~~that the force used was unlawful~~ **for the arrest**.

33 (c) The court shall award reasonable attorney fees, court costs, ~~com-~~
34 ~~pen-sation for loss of income~~ and all expenses incurred by the defendant
35 in defense of any civil action brought by a plaintiff if the court finds that
36 the defendant is immune from prosecution as provided in subsection (a).

37 Sec. 4. K.S.A. 21-3211 is hereby amended to read as follows: 21-
38 3211. (a) A person is justified in the use of force against ~~an aggressor~~
39 ~~another~~ when and to the extent it appears to ~~him and he~~ *such person and*
40 *such person* reasonably believes that such ~~conduct~~ *force* is necessary to
41 defend ~~himself or another~~ *such person or a third person* against such
42 ~~aggressor's other's~~ *aggressor's* imminent use of unlawful force.

43 (b) *A person is justified in the use of deadly force under circumstances*

1 *described in subsection (a) if such person reasonably believes deadly force*
 2 *is necessary to prevent imminent death or great bodily harm to such*
 3 *person or a third person ~~or to prevent the imminent commission of a~~*
 4 *~~forcible felony.~~*

5 Sec. 5. K.S.A. 21-3212 is hereby amended to read as follows: 21-
 6 3212. (a) A person is justified in the use of force against another when
 7 and to the extent that it appears to ~~him and he~~ *such person and such*
 8 *person* reasonably believes that such ~~conduct~~ *force* is necessary to prevent
 9 or terminate such other's unlawful entry into or attack upon ~~his~~ *such*
 10 *person's dwelling or occupied vehicle.*

11 (b) *A person is justified in the use of deadly force to prevent or ter-*
 12 *minate unlawful entry into or attack upon any dwelling or occupied ve-*
 13 *hicle if such person reasonably believes deadly force is necessary to pre-*
 14 *vent imminent death or great bodily harm to such person or another ~~or~~*
 15 *~~to prevent the imminent commission of a forcible entry.~~*

16 Sec. 6. K.S.A. 21-3213 is hereby amended to read as follows: 21-
 17 3213. (a) ~~A person who is lawfully in possession of property other than a~~
 18 ~~dwelling is justified in the threat or use of force against another for the~~
 19 ~~purpose of preventing or terminating an unlawful interference with such~~
 20 ~~property is justified in the use of force against another when and to the~~
 21 ~~extent it appears to such person and such person reasonably believes that~~
 22 ~~such force is necessary to prevent or terminate an unlawful interference~~
 23 ~~with property, other than a dwelling or occupied vehicle, lawfully in such~~
 24 ~~person's possession or the possession of another who is a member of such~~
 25 ~~person's immediately family or household or whose property such person~~
 26 ~~has a legal duty to protect. Only such degree of force or threat thereof~~
 27 ~~as a reasonable man person would deem necessary to prevent or terminate~~
 28 ~~the interference may intentionally be used.~~

29 (b) *A person is justified in the use of deadly force under circumstances*
 30 *described in subsection (a) if such person reasonably believes deadly force*
 31 *is necessary to prevent ~~the imminent commission of a forcible felony~~ im-*
 32 ***minent death or great bodily harm to such person or another.***

33 Sec. 7. K.S.A. 21-3211, 21-3212 and 21-3213 are hereby repealed.

34 Sec. 8. This act shall take effect and be in force from and after its
 35 publication in the statute book.