

**SENATE BILL No. 280**

By Committee on Federal and State Affairs

2-23

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to use of force; modifying the initial aggressor standard; changing  
3 immunity from criminal prosecution and civil action to an affirmative  
4 defense; requiring reporting and publication of certain data by the  
5 Kansas bureau of investigation and the judicial administrator related to  
6 use of force cases; amending K.S.A. 2022 Supp. 21-5226 and 21-5231  
7 and repealing the existing sections.  
8

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

10 Section 1. K.S.A. 2022 Supp. 21-5226 is hereby amended to read as  
11 follows: 21-5226. The justification described in K.S.A. 21-3211, 21-3212  
12 and 21-3213, prior to their repeal, or K.S.A. 2022 Supp. 21-5222, 21-5223  
13 and 21-5225, and amendments thereto, is not available to a person who:

14 (a) Is attempting to commit, committing or escaping from the  
15 commission of a forcible felony;

16 (b) initially provokes the use of any force against such person or  
17 another, with intent to use such force as an excuse to inflict bodily harm  
18 upon the assailant; or

19 (c) ~~otherwise initially provokes~~ *knowingly engages in conduct*  
20 *reasonably likely to provoke* the use of any force against such person or  
21 another, unless:

22 (1) Such person has reasonable grounds to believe that such person is  
23 in imminent danger of death or great bodily harm, and has exhausted every  
24 reasonable means to escape such danger other than the use of deadly force;  
25 or

26 (2) in good faith, such person withdraws from physical contact with  
27 the assailant and indicates clearly to the assailant that such person desires  
28 to withdraw and terminate the use of such force, but the assailant continues  
29 or resumes the use of such force.

30 Sec. 2. K.S.A. 2022 Supp. 21-5231 is hereby amended to read as  
31 follows: 21-5231. (a) A person who uses force ~~which that~~, subject to the  
32 provisions of K.S.A. 2022 Supp. 21-5226, and amendments thereto, is  
33 justified pursuant to K.S.A. 2022 Supp. 21-5222, 21-5223 or 21-5225, and  
34 amendments thereto, ~~is immune from criminal prosecution and civil action~~  
35 ~~for the use of such force~~ *may raise such justification as an affirmative*  
36 *defense*, unless the person against whom force was used is a law

1 enforcement officer who was acting in the performance of such officer's  
2 official duties and the officer identified the officer's self in accordance with  
3 any applicable law or the person using force knew or reasonably should  
4 have known that the person was a law enforcement officer. ~~As used in this~~  
5 ~~subsection, "criminal prosecution" includes arrest, detention in custody~~  
6 ~~and charging or prosecution of the defendant.~~

7 (b) A law enforcement agency may use standard procedures for  
8 investigating the use of force as described in subsection (a), but the agency  
9 shall not arrest the person for using force unless ~~it~~ the agency determines  
10 that there is probable cause for the arrest. *When a law enforcement agency*  
11 *investigates a use of deadly force and declines to arrest the person who*  
12 *used deadly force, the agency shall submit a report to the Kansas bureau*  
13 *of investigation that documents all investigative efforts related to such use*  
14 *of deadly force.*

15 (c) A prosecutor may commence a criminal prosecution upon a  
16 determination of probable cause. *When a prosecutor declines to prosecute*  
17 *a person who used deadly force because the prosecutor determines that*  
18 *there is not probable cause for a criminal prosecution, the prosecutor*  
19 *shall submit a report to the Kansas bureau of investigation that documents*  
20 *all investigative efforts related to such use of deadly force.*

21 (d) *On or before December 1, 2024, and by December 1 each year*  
22 *thereafter, the Kansas bureau of investigation shall publish an annual*  
23 *report on the bureau's public website that analyzes the reports that the*  
24 *bureau received in the previous calendar year pursuant to subsection (b)*  
25 *or (c). The annual report shall include demographic information from the*  
26 *reports received, including, but not limited to, the race and gender of each*  
27 *person who used deadly force and the race and gender of each person or*  
28 *persons against whom deadly force was used.*

29 (e) *The judicial administrator shall collect and compile statistics on*  
30 *all criminal cases in which the justification described in K.S.A. 2022 Supp.*  
31 *21-5222, 21-5223 or 21-5225, and amendments thereto, was raised,*  
32 *including dismissals, trial convictions and trial acquittals, as well as*  
33 *demographic information, including, but not limited to, the race and*  
34 *gender of the person who raised the justification and the race and gender*  
35 *of the person or persons against whom force was used by the person who*  
36 *raised the justification. On or before December 1, 2024, and by December*  
37 *1 each year thereafter, the judicial administrator shall publish an annual*  
38 *report on the judicial branch's public website that analyzes the statistics*  
39 *collected in the previous calendar year pursuant to this section.*

40 Sec. 3. K.S.A. 2022 Supp. 21-5226 and 21-5231 are hereby repealed.

41 Sec. 4. This act shall take effect and be in force from and after its  
42 publication in the statute book.