

As Introduced

**127th General Assembly
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H. B. No. 264

Representative Wachtmann

**Cosponsors: Representatives Brinkman, Goodwin, Evans, Gibbs,
McGregor, R., Flowers, Huffman, Bubp, Adams, Latta, Batchelder, Webster,
Setzer, Fessler, Garrison, Hagan, J., Aslanides, Jones, Hagan, R., Widener,
Mandel, Peterson, Seitz, Reinhard, Zehringer, Daniels, Bolon, Stewart, J.,
Uecker, Schindel, Schlichter, Blessing, Patton, Hottinger**

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A B I L L

To amend section 2901.05 and to enact section 1
2305.402 of the Revised Code to provide a criminal 2
defendant who properly establishes the affirmative 3
defense of self-defense or defense of another with 4
immunity from civil liability for damages related 5
to the acts of self-defense or defense of another 6
and to create a rebuttable presumption that a 7
criminal defendant who raises the affirmative 8
defense of self-defense or defense of another 9
acted properly if the defendant or the person 10
defended by the accused was suffering or was about 11
to suffer a felony offense of violence or a 12
forcible trespass upon the home of the defendant 13
or of the person defended by the accused. 14

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2901.05 be amended and section 15
2305.402 of the Revised Code be enacted to read as follows: 16

Sec. 2305.402. (A) A person who properly establishes the 17
affirmative defense of self-defense or defense of another is not 18
liable in damages to any person in a tort action for injury, 19
death, or loss to person or property allegedly caused by the 20
person while acting in self-defense or defense of another. 21

(B) For purposes of division (A) of this section, the 22
affirmative defense of self-defense or defense of another is 23
properly established when any of the following occurs: 24

(1) The prosecuting attorney declines to charge the person or 25
moves to dismiss the charge because the prosecuting attorney 26
believes that the person acted in self-defense or defense of 27
another. 28

(2) The grand jury finds that the person acted in 29
self-defense or defense of another. 30

(3) The person is acquitted after trial because the court or 31
jury finds that the person acted in self-defense or defense of 32
another. 33

(C) As used in this section, "tort action" has the same 34
meaning as in section 2135.01 of the Revised Code. 35

Sec. 2901.05. (A) Every person accused of an offense is 36
presumed innocent until proven guilty beyond a reasonable doubt, 37
and the burden of proof for all elements of the offense is upon 38
the prosecution. The burden of going forward with the evidence of 39
an affirmative defense, and the burden of proof, by a 40
preponderance of the evidence, for an affirmative defense, is upon 41
the accused. If the accused raises self-defense or defense of 42
another as an affirmative defense and the accused or the person 43
defended by the accused was suffering or was about to suffer an 44
offense of violence that is a felony or was suffering or was about 45
to suffer a forcible trespass upon the home of the accused or the 46

home of the person defended by the accused, there is a rebuttable 47
presumption that the accused acted properly in self-defense or in 48
defense of the person defended by the accused. 49

(B) As part of its charge to the jury in a criminal case, the 50
court shall read the definitions of "reasonable doubt" and "proof 51
beyond a reasonable doubt," contained in division (D) of this 52
section. 53

(C) As used in this section, an "affirmative defense" is 54
either of the following: 55

(1) A defense expressly designated as affirmative; 56

(2) A defense involving an excuse or justification peculiarly 57
within the knowledge of the accused, on which ~~he~~ the accused can 58
fairly be required to adduce supporting evidence. 59

(D) "Reasonable doubt" is present when the jurors, after they 60
have carefully considered and compared all the evidence, cannot 61
say they are firmly convinced of the truth of the charge. It is a 62
doubt based on reason and common sense. Reasonable doubt is not 63
mere possible doubt, because everything relating to human affairs 64
or depending on moral evidence is open to some possible or 65
imaginary doubt. "Proof beyond a reasonable doubt" is proof of 66
such character that an ordinary person would be willing to rely 67
and act upon it in the most important of ~~his~~ the person's own 68
affairs. 69

Section 2. That existing section 2901.05 of the Revised Code 70
is hereby repealed. 71