

House Engrossed Senate Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

CHAPTER 199

SENATE BILL 1145

AN ACT

AMENDING SECTIONS 13-103, 13-205 AND 13-411, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 4, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 13-418, 13-419 AND 13-420; AMENDING LAWS 1983, CHAPTER 255, SECTION 1, AS AMENDED BY LAWS 1990, CHAPTER 410, SECTION 3; RELATING TO DEFENSES OF CRIMINAL CONDUCT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-103, Arizona Revised Statutes, is amended to
3 read:

4 13-103. Abolition of common law offenses and affirmative
5 defenses; definition

6 A. All common law offenses and affirmative defenses are abolished. No
7 conduct or omission constitutes an offense or an affirmative defense unless
8 it is an offense or an affirmative defense under this title or under another
9 statute or ordinance.

10 B. For the purposes of this section, "affirmative defense" means a
11 defense that is offered and that attempts to ~~justify~~ EXCUSE the criminal
12 actions of the accused or another person for whose actions the accused may be
13 deemed to be accountable. Affirmative defense does not include ANY
14 JUSTIFICATION DEFENSE PURSUANT TO CHAPTER 4 OF THIS TITLE OR any defense that
15 either denies an element of the offense charged or denies responsibility,
16 including alibi, misidentification or lack of intent.

17 Sec. 2. Section 13-205, Arizona Revised Statutes, is amended to read:

18 13-205. Affirmative defenses; burden of proof

19 A. Except as otherwise provided by law, a defendant shall prove any
20 affirmative defense raised by a preponderance of the evidence, ~~including any~~
21 ~~justification defense under chapter 4 of this title.~~ JUSTIFICATION DEFENSES
22 UNDER CHAPTER 4 OF THIS TITLE ARE NOT AFFIRMATIVE DEFENSES. JUSTIFICATION
23 DEFENSES DESCRIBE CONDUCT THAT, IF NOT JUSTIFIED, WOULD CONSTITUTE AN OFFENSE
24 BUT, IF JUSTIFIED, DOES NOT CONSTITUTE CRIMINAL OR WRONGFUL CONDUCT. IF
25 EVIDENCE OF JUSTIFICATION PURSUANT TO CHAPTER 4 OF THIS TITLE IS PRESENTED BY
26 THE DEFENDANT, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE
27 DEFENDANT DID NOT ACT WITH JUSTIFICATION.

28 B. This section does not affect the presumption contained in section
29 13-411, subsection C and section 13-503.

30 Sec. 3. Section 13-411, Arizona Revised Statutes, is amended to read:

31 13-411. Justification; use of force in crime prevention;
32 applicability

33 A. A person is justified in threatening or using both physical force
34 and deadly physical force against another if and to the extent the person
35 reasonably believes that physical force or deadly physical force is
36 immediately necessary to prevent the other's commission of arson of an
37 occupied structure under section 13-1704, burglary in the second or first
38 degree under section 13-1507 or 13-1508, kidnapping under section 13-1304,
39 manslaughter under section 13-1103, second or first degree murder under
40 section 13-1104 or 13-1105, sexual conduct with a minor under section
41 13-1405, sexual assault under section 13-1406, child molestation under
42 section 13-1410, armed robbery under section 13-1904, or aggravated assault
43 under section 13-1204, subsection A, paragraphs 1 and 2.

44 B. There is no duty to retreat before threatening or using PHYSICAL
45 FORCE OR deadly physical force justified by subsection A of this section.

1 C. A person is presumed to be acting reasonably for the purposes of
2 this section if he THE PERSON is acting to prevent the commission of any of
3 the offenses listed in subsection A of this section.

4 D. THIS SECTION IS NOT LIMITED TO THE USE OR THREATENED USE OF
5 PHYSICAL OR DEADLY PHYSICAL FORCE IN A PERSON'S HOME, RESIDENCE, PLACE OF
6 BUSINESS, LAND THE PERSON OWNS OR LEASES, CONVEYANCE OF ANY KIND, OR ANY
7 OTHER PLACE IN THIS STATE WHERE A PERSON HAS A RIGHT TO BE.

8 Sec. 4. Title 13, chapter 4, Arizona Revised Statutes, is amended by
9 adding sections 13-418, 13-419 and 13-420, to read:

10 13-418. Justification; use of force in defense of residential
11 structure or occupied vehicles; definition

12 A. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, A PERSON IS
13 JUSTIFIED IN THREATENING TO USE OR USING PHYSICAL FORCE OR DEADLY PHYSICAL
14 FORCE AGAINST ANOTHER PERSON IF THE PERSON REASONABLY BELIEVES HIMSELF OR
15 ANOTHER PERSON TO BE IN IMMINENT PERIL OF DEATH OR SERIOUS PHYSICAL INJURY
16 AND THE PERSON AGAINST WHOM THE PHYSICAL FORCE OR DEADLY PHYSICAL FORCE IS
17 THREATENED OR USED WAS IN THE PROCESS OF UNLAWFULLY OR FORCEFULLY ENTERING,
18 OR HAD UNLAWFULLY OR FORCEFULLY ENTERED, A RESIDENTIAL STRUCTURE OR OCCUPIED
19 VEHICLE, OR HAD REMOVED OR WAS ATTEMPTING TO REMOVE ANOTHER PERSON AGAINST
20 THE OTHER PERSON'S WILL FROM THE RESIDENTIAL STRUCTURE OR OCCUPIED VEHICLE.

21 B. A PERSON HAS NO DUTY TO RETREAT BEFORE THREATENING OR USING
22 PHYSICAL FORCE OR DEADLY PHYSICAL FORCE PURSUANT TO THIS SECTION.

23 C. FOR THE PURPOSES OF THIS SECTION:

24 1. "RESIDENTIAL STRUCTURE" HAS THE SAME MEANING PRESCRIBED IN SECTION
25 13-1501.

26 2. "VEHICLE" MEANS A CONVEYANCE OF ANY KIND, WHETHER OR NOT MOTORIZED,
27 THAT IS DESIGNED TO TRANSPORT PERSONS OR PROPERTY.

28 13-419. Presumption; exceptions; definition

29 A. A PERSON IS PRESUMED TO BE ACTING REASONABLY FOR THE PURPOSES OF
30 SECTIONS 13-404 THROUGH 13-408 AND SECTION 13-418 IF THE PERSON IS ACTING
31 AGAINST ANOTHER PERSON WHO UNLAWFULLY OR FORCEFULLY ENTERS OR ENTERED THE
32 PERSON'S RESIDENTIAL STRUCTURE OR OCCUPIED VEHICLE, EXCEPT THAT THE
33 PRESUMPTION DOES NOT APPLY IF:

34 1. THE PERSON AGAINST WHOM PHYSICAL FORCE OR DEADLY PHYSICAL FORCE WAS
35 USED HAS THE RIGHT TO BE IN OR IS A LAWFUL RESIDENT OF THE RESIDENTIAL
36 STRUCTURE OR OCCUPIED VEHICLE, INCLUDING AN OWNER, LESSEE, INVITEE OR
37 TITLEHOLDER, AND AN ORDER OF PROTECTION OR INJUNCTION AGAINST HARASSMENT HAS
38 NOT BEEN FILED AGAINST THAT PERSON.

39 2. THE PERSON AGAINST WHOM THE PHYSICAL FORCE OR DEADLY PHYSICAL FORCE
40 WAS USED IS THE PARENT OR GRANDPARENT, OR HAS LEGAL CUSTODY OR GUARDIANSHIP,
41 OF A CHILD OR GRANDCHILD SOUGHT TO BE REMOVED FROM THE RESIDENTIAL STRUCTURE
42 OR OCCUPIED VEHICLE.

43 3. THE PERSON WHO USES PHYSICAL FORCE OR DEADLY PHYSICAL FORCE IS
44 ENGAGED IN AN UNLAWFUL ACTIVITY OR IS USING THE RESIDENTIAL STRUCTURE OR
45 OCCUPIED VEHICLE TO FURTHER AN UNLAWFUL ACTIVITY.

1 4. THE PERSON AGAINST WHOM THE PHYSICAL FORCE OR DEADLY PHYSICAL FORCE
2 WAS USED IS A LAW ENFORCEMENT OFFICER WHO ENTERS OR ATTEMPTS TO ENTER A
3 RESIDENTIAL STRUCTURE OR OCCUPIED VEHICLE IN THE PERFORMANCE OF OFFICIAL
4 DUTIES.

5 B. FOR THE PURPOSES OF THIS SECTION:

6 1. "RESIDENTIAL STRUCTURE" HAS THE SAME MEANING PRESCRIBED IN SECTION
7 13-1501.

8 2. "VEHICLE" MEANS A CONVEYANCE OF ANY KIND, WHETHER OR NOT MOTORIZED,
9 THAT IS DESIGNED TO TRANSPORT PERSONS OR PROPERTY.

10 13-420. Attorney fees; costs

11 THE COURT SHALL AWARD REASONABLE ATTORNEY FEES, COSTS, COMPENSATION FOR
12 LOST INCOME AND ALL EXPENSES INCURRED BY A DEFENDANT IN THE DEFENSE OF ANY
13 CIVIL ACTION BASED ON CONDUCT OTHERWISE JUSTIFIED PURSUANT TO THIS CHAPTER IF
14 THE DEFENDANT PREVAILS IN THE CIVIL ACTION.

15 Sec. 5. Laws 1983, chapter 255, section 1, as amended by Laws 1990,
16 chapter 410, section 3, is amended to read:

17 Section 1. Declaration of policy

18 A. ~~The legislature finds that homes of Arizona residents are being~~
19 ~~burglarized and violated at an alarming and unacceptable rate that is~~
20 ~~endangering the residents' safety, health and property, thereby depriving~~
21 ~~them of their safe and peaceful enjoyment of their homes.~~

22 B. ~~It is the legislative intent to establish a policy by this law~~
23 ~~giving notice to all citizens, law enforcement personnel and the state courts~~
24 ~~that a person's home, its contents and the residents therein shall be totally~~
25 ~~respected and protected in Arizona, and that the law enforcement officials~~
26 ~~and courts shall apply this and all other applicable criminal laws relating~~
27 ~~to the protection of the home and its residents promptly and severely so as~~
28 ~~to restore the total sanctity of the home in Arizona.~~

29 C. The legislature is alarmed by the increasing number of injuries and
30 fatalities caused to victims of domestic violence. A person should be
31 entitled to safe and peaceful enjoyment within the home even from residents
32 of the same household. It is the intent of the legislature that all
33 citizens, law enforcement personnel and the state courts be given notice that
34 the justification in use of force provided in section 13-411, Arizona Revised
35 Statutes, is applicable to all victims of domestic violence as defined by
36 section 36-3001, Arizona Revised Statutes, whether such domestic violence
37 occurs in a private or public place and whether or not the victim and the
38 perpetrator of domestic violence are residents of the same home.

39 Sec. 6. Emergency

40 This act is an emergency measure that is necessary to preserve the
41 public peace, health or safety and is operative immediately as provided by
42 law.

APPROVED BY THE GOVERNOR APRIL 24, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2006.