

CHAPTER 124

HOUSE Substitute for SENATE BILL No. 381

AN ACT concerning crimes, punishment and criminal procedure; relating to justified threat or use of force; amending K.S.A. 21-3211, 21-3212, 21-3213, 21-3214, 21-3215, 21-3216, 21-3217 and 21-3218 and repealing the existing sections.

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

New Section 1. The provisions of this act are to be construed and applied retroactively.

New Sec. 2. (a) As used in article 32 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto:

(1) "Use of force" means any or all of the following directed at or upon another person or thing: (A) Words or actions that reasonably convey the threat of force, including threats to cause death or great bodily harm to a person; (B) the presentation or display of the means of force; or (C) the application of physical force, including by a weapon or through the actions of another.

(2) "Use of deadly force" means the application of any physical force described in paragraph (1) which is likely to cause death or great bodily harm to a person. Any threat to cause death or great bodily harm, including, but not limited to, by the display or production of a weapon, shall not constitute use of deadly force, so long as the actor's purpose is limited to creating an apprehension that the actor will, if necessary, use deadly force in defense of such actor or another or to affect a lawful arrest.

(b) An actor who threatens deadly force as described in subsection (a)(1) shall be subject to the determination in subsection (a) of K.S.A. 21-3211, and amendments thereto, and not to the determination in subsection (b) of K.S.A. 21-3211, and amendments thereto.

New Sec. 3. (a) For the purposes of K.S.A. 21-3211 and 21-3212, and amendments thereto, a person is presumed to have a reasonable belief that deadly force is necessary to prevent imminent death or great bodily harm to such person or another person if:

(1) The person against whom the force is used, at the time the force is used:

(A) Is unlawfully or forcefully entering, or has unlawfully or forcefully entered, and is present within, the dwelling, place of work or occupied vehicle of the person using force; or

(B) has removed or is attempting to remove another person against such other person's will from the dwelling, place of work or occupied vehicle of the person using force; and

(2) the person using force knows or has reason to believe that any of the conditions set forth in paragraph (1) is occurring or has occurred.

(b) The presumption set forth in subsection (a) does not apply if, at the time the force is used:

(1) The person against whom the force is used has a right to be in, or is a lawful resident of, the dwelling, place of work or occupied vehicle of the person using force, and is not subject to any order listed in K.S.A. 21-3843, and amendments thereto, that would prohibit such person's presence in the property;

(2) the person sought to be removed is a child, grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the force is used;

(3) the person using force is engaged in the commission of a crime, attempting to escape from a location where a crime has been committed, or is using the dwelling, place of work or occupied vehicle to further the commission of a crime; or

(4) the person against whom the force is used is a law enforcement officer who has entered or is attempting to enter a dwelling, place of work or occupied vehicle in the lawful performance of such officer's lawful duties, and the person using force knows or reasonably should know that the person who has entered or is attempting to enter is a law enforcement officer.

Sec. 4. K.S.A. 21-3211 is hereby amended to read as follows: 21-3211. (a) A person is justified in the use of force against another when and to the extent it appears to such person and such person reasonably believes that such *use of* force is necessary to defend such person or a third person against such other's imminent use of unlawful force.

(b) A person is justified in the use of deadly force under circumstances described in subsection (a) if such person reasonably believes *that such use of deadly force* is necessary to prevent imminent death or great bodily harm to such person or a third person.

(c) Nothing in this section shall require a person to retreat if such person is using force to protect such person or a third person.

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

(b) A person is justified in the use of deadly force to prevent or terminate unlawful entry into or attack upon any dwelling, *place of work* or occupied vehicle if such person reasonably believes *that such use of deadly force* is necessary to prevent imminent death or great bodily harm to such person or another.

(c) Nothing in this section shall require a person to retreat if such person is using force to protect such person's dwelling, *place of work* or occupied vehicle.

Sec. 6. K.S.A. 21-3213 is hereby amended to read as follows: 21-3213. A person who is lawfully in possession of property other than a dwelling, *place of work or occupied vehicle* is justified in the ~~threat or~~ use of force against another for the purpose of preventing or terminating an unlawful interference with such property. Only such ~~degree use of force or threat thereof~~ as a reasonable ~~man~~ *person* would deem necessary to prevent or terminate the interference may intentionally be used.

Sec. 7. K.S.A. 21-3214 is hereby amended to read as follows: 21-3214. The justification described in sections 21-3211, 21-3212; and 21-3213, *and amendments thereto*, is not available to a person who:

~~(1)~~ (a) Is attempting to commit, committing, or escaping from the commission of a forcible felony; or

~~(2)~~ (b) Initially provokes the use of *any* force against ~~himself~~ *such person* or another, with intent to use such force as an excuse to inflict bodily harm upon the assailant; or

~~(3)~~ (c) Otherwise initially provokes the use of *any* force against ~~himself~~ *such person* or another, unless:

~~(a)~~ ~~He~~ (1) *Such person* has reasonable ~~ground~~ *grounds* to believe that ~~he~~ *such person* is in imminent danger of death or great bodily harm, and ~~he~~ *such person* has exhausted every reasonable means to escape such danger other than the use of *deadly force* ~~which is likely to cause death or great bodily harm to the assailant~~; or

~~(b)~~ (2) In good faith, ~~he~~ *such person* withdraws from physical contact with the assailant and indicates clearly to the assailant that ~~he~~ *such person* desires to withdraw and terminate the use of *such* force, but the assailant continues or resumes the use of *such* force.

Sec. 8. K.S.A. 21-3215 is hereby amended to read as follows: 21-3215. ~~(1)~~ (a) A law enforcement officer, or any person whom such officer has summoned or directed to assist in making a lawful arrest, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. Such officer is justified in the use of any force which such officer reasonably believes to be necessary to effect the arrest and ~~of the use of~~ any force which such officer reasonably believes to be necessary to defend the officer's self or another from bodily harm while making the arrest. However, such officer is justified in using *deadly force* ~~likely to cause death or great bodily harm~~ only when such officer reasonably believes that such force is necessary to prevent death or great bodily harm to such officer or another person, or when such officer reasonably believes that such force is necessary to prevent the arrest from being defeated by resistance or escape and such officer has probable cause to believe that the person to be arrested has committed or attempted to commit a felony involving *death or* great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that such person will endanger human life or inflict great bodily harm unless arrested without delay.

~~(2)~~ (b) A law enforcement officer making an arrest pursuant to an invalid warrant is justified in the use of any force which such officer would be justified in using if the warrant were valid, unless such officer knows that the warrant is invalid.

Sec. 9. K.S.A. 21-3216 is hereby amended to read as follows: 21-3216. ~~(1)~~ (a) A private person who makes, or assists another private person in making a lawful arrest is justified in the use of any force which ~~he such person~~ would be justified in using if ~~he such person~~ were summoned or directed by a law enforcement officer to make such arrest, except that ~~he such person~~ is justified in the use of *deadly* force ~~likely to cause death or great bodily harm~~ only when ~~he such person~~ reasonably believes that such force is necessary to prevent death or great bodily harm to ~~himself such person~~ or another.

~~(2)~~ (b) A private person who is summoned or directed by a law enforcement officer to assist in making an arrest which is unlawful, is justified in the use of any force which ~~he such person~~ would be justified in using if the arrest were lawful.

Sec. 10. K.S.A. 21-3217 is hereby amended to read as follows: 21-3217. A person is not authorized to use force to resist an arrest which ~~he such person~~ knows is being made either by a law enforcement officer or by a private person summoned and directed by a law enforcement officer to make the arrest, even if the person arrested believes that the arrest is unlawful.

Sec. 11. K.S.A. 21-3218 is hereby amended to read as follows: 21-3218. (a) A person who is not engaged in an unlawful activity and who is attacked in a place where such person has a right to be has no duty to retreat and has the right to stand such person's ground and ~~meet force with force~~ use any force which such person would be justified in using under article 32 of chapter 21 of the *Kansas Statutes Annotated*, and amendments thereto.

(b) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 12. K.S.A. 21-3211, 21-3212, 21-3213, 21-3214, 21-3215, 21-3216, 21-3217 and 21-3218 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 19, 2010.

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