

SESSION OF 2006

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2577

As Amended by House Committee on
Federal and State Affairs

Brief*

HB 2577, as amended, would authorize a person who is not engaged in an unlawful activity and who is attacked in a place where the person has the right to be, to stand his or her ground and fight back with no duty to retreat.

The bill would amend the statutes on use of force in defense of a person, dwelling, and property other than a dwelling, by explicitly adding the authority for a person to use deadly force against another, if the person reasonably believes death or great bodily harm to the person or a third person is imminent.

A person would be presumed to have a reasonable fear that death or great bodily harm to the person or a third person is imminent if:

- The person against whom deadly force is used had or was unlawfully and forcibly entering a dwelling or occupied vehicle;
- The person against whom deadly force is used had removed or was attempting to remove a person against his or her will from a dwelling or occupied vehicle; and
- The person who used deadly force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible removal was occurring or had occurred.

The above provisions would not apply if:

- The person against whom deadly force is used has the right to be in the dwelling or vehicle, or is a resident or owner of the dwelling or vehicle, and there is not a court order restraining the

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

person from contact with a person occupying the dwelling or vehicle;

- The person sought to be removed is a child, grandchild, or is in the lawful custody of the person against whom deadly force is used, and there is not a court order restraining the person against whom such force is used from contact with the child;
- The person who uses deadly force is engaged in an unlawful activity or is using the dwelling or occupied vehicle to further an unlawful activity; or
- The person against whom deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling or vehicle while performing official duties, and the officer identified himself or herself in accordance with the law, or the person using deadly force knew or reasonably should have known that the person was an officer.

The bill would immunize a person from criminal prosecution and civil action for the use of force. If, however, the force is used against a law enforcement officer, the person using the force would not be immune from criminal prosecution and civil action. The law enforcement officer would have to be in the act of performing his or her official duties and the officer would have to identify himself or herself in accordance with the law, or the person using force knew or reasonably should have known the person was an officer.

A law enforcement agency would be permitted to use standard procedures to investigate the use of force. However, the agency would not be permitted to arrest a person for using force unless it determines there is probable cause to arrest. A court would be required to award reasonable attorney fees, court costs, and all expenditures incurred by the defendant in the defense of a civil action, if the court finds the defendant is immune from prosecution.

Background

The House Committee on Federal and State Affairs amended the bill as follow to:

- Strike the words “in the process of” when describing the act of unlawfully and forcibly entering a dwelling or occupied vehicle;

- Authorize arrest if probable cause for the arrest exists. The amendment removes the phrase “that the force used was unlawful”;
- Strike the provision for compensation for loss of income;
- Strike the language justifying the use of deadly force to prevent the imminent commission of a forcible felony; and
- Clarify that a person is justified in the use of deadly force against another if a person reasonably believes it is necessary to prevent imminent death or great bodily harm to such person or a third person under the use of force in defense of property other than a dwelling provisions in the bill.

Representative Richard Carlson, Senator Phil Journey and a representative of the National Rifle Association presented testimony in support of the bill at the House Committee hearing.

A representative of Interfaith Ministries and a representative from the League of Women Voters presented testimony in opposition to the bill.

The fiscal note from the Division of the Budget on the introduced version of the bill states that according to the Kansas Highway Patrol, the passage of this bill would require additional training to ensure officers understand the bill's provisions. However, the Patrol would provide the training during its annual required continuing education courses and no additional funds would be needed to support the requirements of this bill.

The Office of Judicial Administration states the passage of this bill has the potential to lengthen trials. Also, the Office states that the bill has the potential to decrease the number of cases because prosecutors would not file certain cases because of the immunity provisions. However, the agency of the bill would have on its operating expenditures.