

SESSION OF 2010

**SUPPLEMENTAL NOTE ON HOUSE
SUBSTITUTE FOR SENATE BILL NO. 381**

As Recommended by House Committee on
Judiciary

Brief*

House Sub. for SB 381 would:

- Add a new definitions section in which “use of force” is defined to include threats;
- Clarify that a person who threatens deadly force, which is also defined in the new definitions section, would be subject to the statutory provision governing “use of force,” rather than “use of deadly force;”
- Specify that the new definitions section is meant to apply retroactively;
- Add “place of work” to the list of places where a person can use deadly force to prevent or terminate an unlawful entry or attack, if such person reasonably believes it is necessary to prevent imminent death or great bodily harm;
- Provide that a person who is lawfully in possession of a place of work or an occupied vehicle is justified in the use of force to prevent or terminate unlawful interference with that property;
- Clarify that a person would not be required to retreat when using force to protect a place of work; and

*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>

- Add a new section that would create a presumption that deadly force is necessary under certain circumstances.

The bill would take effect on publication in the *Kansas Register*.

Background

In *State v. Hendrix*, 289 Kan. 859 (2009), the Kansas Supreme Court ruled that the defendant was not entitled to a self-defense instruction because no physical force was used. Essentially, the Court ruled that because the self-defense statute refers only to the “use of force,” actual use of force is required in order to obtain a self-defense instruction. The additions of “threat of force” in this bill would change the result of this case to allow the self defense instruction to be given when no actual force is used so that a jury may determine the whether the threat of force was justified.

The proponents of the bill, as introduced, who presented testimony in the Senate Committee hearing were Senators Derek Schmidt and Mike Petersen, sponsors of the bill; and representatives of the Kansas Association of Chiefs of Police, the National Rifle Association of America, the Kansas Association of Criminal Defense Lawyers, and the Kansas Association of County and District Attorneys.

There was no testimony in opposition to the bill in the Senate Committee hearing. The Senate Committee amended this bill to add the rebuttable presumption provisions and to make it apply retroactively.

The proponents of the bill, as amended, who presented testimony in the House Committee hearing were Senator Mike Peterson and representatives of the Kansas Association of Chiefs of Police, the Kansas Peace Officers Association, and the National Rifle Association of America. A representative of the Kansas County and District Attorney Association also presented written testimony in support of the bill. No opponents appeared at the hearing.

The House Committee adopted a substitute bill, which amended SB 381 in several ways. First, in lieu of “threat or use of force,” the Committee deleted “threat or” and added a new definitions section in which “use of force” is defined to include threats. Similarly, the Committee clarified that a person who threatens deadly force, which is also defined in the new definitions section, would be subject to the statutory provision governing “use of force,” rather than “use of deadly force.” Further, the Committee specified that the new definitions section is meant to apply retroactively.

The Committee also amended the bill by adding “place of work” to the list of places where a person can use deadly force to prevent or terminate an unlawful entry or attack, if such person reasonably believes it is necessary to prevent imminent death or great bodily harm. The bill also provides that a person who is lawfully in possession of a place of work or an occupied vehicle is justified in the use of force to prevent or terminate unlawful interference with that property and clarifies that a person would not be required to retreat when using force to protect a place of work.

Finally, the Committee amended the bill by adding a new section that would create a presumption that deadly force is necessary under certain circumstances, which are outlined in the section, and changed the effective date to publication in the register.

According to the fiscal note on the bill, as introduced, passage of the bill would have no fiscal effect.