

**OFFICE OF THE
MOUNTRAIL COUNTY STATE'S ATTORNEY**

P.O. Box 369
Stanley, ND 58784

Wade G. Enget, State's Atty.
William E. Woods, Jr., Asst. State's Atty.
Amber J. Fiesel, Asst. State's Atty.

Telephone (701) 628-2965
Fax No. (701) 628-3706

To: **Hon. Chairman Larson
Hon. Vice-Chair Paulson
Members of the Senate Judiciary Committee**

From: **Wade G. Enget, Mountrail County State's Attorney**

Re: **HB 1213**

Committee Members, I am submitting this testimony in OPPOSITION to HB 1213, as I have several concerns with HB 1213 as written. I will summarize the reasons for my opposition:

- 1) The expressed premise of HB 1213 is: "Way too often have we seen politically motivated prosecutors bring charges against individuals over clear instances of self defense." A second stated premise by Representative Rios is: "These prosecutors, who I believe to an anti second amendment and therefore anti self defense, chose to ignore clear evidence of self defense and do not seek to pursue any sort of justice but instead are solely for political gain." Yet, there has not been provided to this Committee even one example of politically motivated prosecutions, or of an example of a prosecutor who is anti-2nd Amendment.
- 2) If HB 1213 is passed, there are no provisions within HB1213 that require a jury to make a finding of self-defense. In almost all cases, the jury returns a verdict of simply guilty or not guilty. The only time the jury is required to make additional findings is when specific statutory limitation are included in the essential elements or penalty section, which include criminal cases involving: whether a firearm was used, whether the defendant possessed/sold drugs within X amount of feet from a school, the weight of the illegal drugs, etc. HB 1213 is lacking of a mechanism to make sure that the jury or judge specifically makes a finding that their verdict was based upon self-defense.
- 3) HB 1213 does not require that a jury impaneled in a criminal cases make special findings as to why they found the defendant "NOT GUILTY". The sponsor testified before the House Judiciary Committee that this proposed legislation was similar to existing laws in the State of Washington and the State of Kentucky.

In the State of Washington, the statute explicitly requires a special findings by the jury of self-defense. Further, the statute requires a special finding as to whether the defendant "engaged in criminal conduct sustantially related to the events giving rise to the crime with which the defendant is charged." If that finding is answered in the affirmative, then the judge may "deny or reduce the amount of the award."

In the State of Kentucky, self-defense is an affirmative defense, for which the defendant has the burden of proof. Further, any reimbursement is allowed by way of a civil action.

I have attached the provisions of the existing law in the State of Washington (**Exhibit "A"**) and the State of Kentucky (**Exhibit "B"**). Please take the time to review the differences that both the Washington and Kentucky versus the provisions of HB 1213.

4) How would HB 1213 interact with the provisions of Article I, Section 25 of the North Dakota Constitution, otherwise referred to a "Marsy's Law". The citizens of North Dakota, when the adopted this Constitutional amendment, have instituted a constitutional obligation to "preserve and protect the right of crime victims to justice" upon prosecutors and other members of the criminal justice system. I have attached a copy of Article I, Section 25 of the North Dakota Constitution to my testimony as **Exhibit #C**.

5) I looked at the fiscal note attached to the Bill, and note the following on Subsection 4 of the fiscal note:

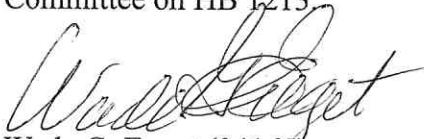
"The fiscal impact cannot be determined. The source of funding for the reimbursement awarded is not specified in the bill. Generally, if a county official or prosecutor was responsible for the harm, the county would be responsible for the damages. The "state" as an entity has no input over those decisions."

This would appear to be a unfunded mandate upon all counties, as there is not a mechanism put forth within the language of the Bill to have the State pay for potential damages, so the potential cost would fall totally upon the county.

6) There is serious concern as to whether the North Dakota Insurance Reserve Fund (NDIRF), which is the insurance carrier for a vast majority of the counties in North Dakota, would cover any potential damages imposed. The insurance contract that the County has with NDIRF requires that the County notify NDIRF when the potential cause of action accrues. NDIRF makes that a part of its contract, as they want the ability to have a seat at the table and be represented prior to any damages being awarded. HB 1213 does not allow that to happen in its present form. As such, there is a real possibility that the County would not have insurance coverage for these potential claims.

7) The potential for the imposition of all these costs against the county could be a real problem and will have be contemplated prior to prosecutors charging out crimes involving domestic violence, assaults, kidnapping, felonious restraint, negligent homicide, manslaughter and murder.

Thank you for your time, and again I would request a **DO NOT PASS** recommendation from this Committee on HB 1213.


Wade G. Enget (04165)
Mountrail County State's Attorney
101 N. Main St.
P.O. Box 69
Stanley, ND 58784
(701)628-2965

RCW 9A.16.110 Defending against violent crime—Reimbursement.

(1) No person in the state shall be placed in legal jeopardy of any kind whatsoever for protecting by any reasonable means necessary, himself or herself, his or her family, or his or her real or personal property, or for coming to the aid of another who is in imminent danger of or the victim of assault, robbery, kidnapping, arson, burglary, rape, murder, or any other violent crime as defined in RCW 9.94A.030.

(2) When a person charged with a crime listed in subsection (1) of this section is found not guilty by reason of self-defense, the state of Washington shall reimburse the defendant for all reasonable costs, including loss of time, legal fees incurred, and other expenses involved in his or her defense. This reimbursement is not an independent cause of action. To award these reasonable costs the trier of fact must find that the defendant's claim of self-defense was sustained by a preponderance of the evidence. If the trier of fact makes a determination of self-defense, the judge shall determine the amount of the award.

(3) Notwithstanding a finding that a defendant's actions were justified by self-defense, if the trier of fact also determines that the defendant was engaged in criminal conduct substantially related to the events giving rise to the charges filed against the defendant the judge may deny or reduce the amount of the award. In determining the amount of the award, the judge shall also consider the seriousness of the initial criminal conduct.

Nothing in this section precludes the legislature from using the sundry claims process to grant an award where none was granted under this section or to grant a higher award than one granted under this section.

(4) Whenever the issue of self-defense under this section is decided by a judge, the judge shall consider the same questions as must be answered in the special verdict under subsection (4) [(5)] of this section.

(5) Whenever the issue of self-defense under this section has been submitted to a jury, and the jury has found the defendant not guilty, the court shall instruct the jury to return a special verdict in substantially the following form:

- | | answer
yes or no |
|--|---------------------|
| 1. Was the finding of not guilty based upon self-defense? | |
| 2. If your answer to question 1 is no, do not answer the remaining question. | |
| 3. If your answer to question 1 is yes, was the defendant: | |
| a. Protecting himself or herself? | |
| b. Protecting his or her family? | |
| c. Protecting his or her property? | |
| d. Coming to the aid of another who was in imminent danger of a heinous crime? | |
| e. Coming to the aid of another who was the victim of a heinous crime? | |
| f. Engaged in criminal conduct substantially related to the events giving rise to the crime with which the defendant is charged? | |

Exhibit A'

[1995 c 44 § 1; 1989 c 94 § 1; 1977 ex.s. c 206 § 8. Formerly RCW 9.01.200.]

Use of deadly force—Legislative recognition: See note following RCW 9A.16.040.

Baldwin's Kentucky Revised Statutes Annotated
Title L. Kentucky Penal Code
Chapter 503. General Principles of Justification (Refs & Annos)

KRS § 503.085

503.085 Justification and criminal and civil immunity for use of permitted force; exceptions

Effective: July 12, 2006

Currentness

- (1) A person who uses force as permitted in KRS 503.050, 503.055, 503.070, and 503.080 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom the force was used is a peace officer, as defined in KRS 446.010, who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law, or the person using force knew or reasonably should have known that the person was a peace officer. As used in this subsection, the term "criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant.
- (2) A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (1) of this section, but the agency may not arrest the person for using force unless it determines that there is probable cause that the force that was used was unlawful.
- (3) The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff, if the court finds that the defendant is immune from prosecution as provided in subsection (1) of this section.

Credits

HISTORY: 2006 c 192, § 6, eff. 7-12-06

Editors' Notes

Relevant Additional Resources

Additional Resources listed below contain your search terms.

RESEARCH REFERENCES**Treatises and Practice Aids**Kentucky Practice, Substantive Criminal Law § 5:22, **Self-Defense--Generally**.

Relevant Notes of Decisions (30)

View all 52

Notes of Decisions listed below contain your search terms.

Baldwin's Kentucky Revised Statutes Annotated
Title L. Kentucky Penal Code
Chapter 503. General Principles of Justification (Refs & Annos)

KRS § 503.050

503.050 Use of physical force in self-protection; admissibility
of evidence of prior acts of domestic violence and abuse

Effective: July 12, 2006

Currentness

- (1) The use of physical force by a defendant upon another person is justifiable when the defendant believes that such force is necessary to protect himself against the use or imminent use of unlawful physical force by the other person.
- (2) The use of deadly physical force by a defendant upon another person is justifiable under subsection (1) only when the defendant believes that such force is necessary to protect himself against death, serious physical injury, kidnapping, sexual intercourse compelled by force or threat, felony involving the use of force, or under those circumstances permitted pursuant to KRS 503.055.
- (3) Any evidence presented by the defendant to establish the existence of a prior act or acts of domestic violence and abuse as defined in KRS 403.720 by the person against whom the defendant is charged with employing physical force shall be admissible under this section.
- (4) A person does not have a duty to retreat prior to the use of deadly physical force.

Credits

HISTORY: 2006 c 192, § 3, eff. 7-12-06; 1992 c 173, § 2, eff. 7-14-92; 1974 c 406, § 30

Editors' Notes**KENTUCKY CRIME COMMISSION/LRC COMMENTARY****1974:**

A person free of fault has always been privileged to defend himself against injury threatened by another. The availability of this privilege as a defense to a criminal charge is dependent under prevailing law upon a showing that: the defendant believed physical force to be necessary for self-protection against an unlawful attack; his belief was based upon reasonable grounds; the force used was believed necessary to avoid imminent danger; and the force used was not in excess of that believed necessary to repel the unlawful attack. Only one major change of direction in this doctrine is accomplished by KRS 503.050. No longer is availability of the privilege dependent upon a showing that a defendant's belief in the necessity of his action is reasonable. If an individual believes that another is using or threatening the imminent use of unlawful force, he is justified in using an amount of force believed necessary to protect himself. The fact that unlawful force is not actually being threatened, that the

Baldwin's Kentucky Revised Statutes Annotated
Title L. Kentucky Penal Code
Chapter 503. General Principles of Justification (Refs & Annos)

KRS § 503.055

503.055 Use of defensive force regarding dwelling, residence, or occupied vehicle; exceptions

Effective: July 12, 2006

Currentness

- (1) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if:
 - (a) The person against whom the defensive force was used was in the process of unlawfully and forcibly entering or had unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and
 - (b) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

- (2) The presumption set forth in subsection (1) of this section does not apply if:
 - (a) The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person;
 - (b) The person sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the defensive force is used;
 - (c) The person who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or
 - (d) The person against whom the defensive force is used is a peace officer, as defined in KRS 446.010, who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties, and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a peace officer.

- (3) A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force, if he

or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a felony involving the use of force.

(4) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

Credits

HISTORY: 2006 c 192, § 2, eff. 7-12-06

Notes of Decisions (17)

KRS § 503.055, KY ST § 503.055

Current through laws effective Jan. 6, 2023 and the Nov. 8, 2022 election. Some sections may be more current, see credits for details.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Kentucky Revised Statutes Annotated
Title L. Kentucky Penal Code
Chapter 503. General Principles of Justification (Refs & Annos)

KRS § 503.070

503.070 Protection of another

Effective: July 12, 2006

Currentness

(1) The use of physical force by a defendant upon another person is justifiable when:

- (a) The defendant believes that such force is necessary to protect a third person against the use or imminent use of unlawful physical force by the other person; and
- (b) Under the circumstances as the defendant believes them to be, the person whom he seeks to protect would himself have been justified under KRS 503.050 and 503.060 in using such protection.

(2) The use of deadly physical force by a defendant upon another person is justifiable when:

- (a) The defendant believes that such force is necessary to protect a third person against imminent death, serious physical injury, kidnapping, sexual intercourse compelled by force or threat, or other felony involving the use of force, or under those circumstances permitted pursuant to KRS 503.055; and
- (b) Under the circumstances as they actually exist, the person whom he seeks to protect would himself have been justified under KRS 503.050 and 503.060 in using such protection.

(3) A person does not have a duty to retreat if the person is in a place where he or she has a right to be.

Credits

HISTORY: 2006 c 192, § 4, eff. 7-12-06; 1974 c 406, § 32, eff. 1-1-75

Editors' Notes

KENTUCKY CRIME COMMISSION/LRC COMMENTARY

1974:

This provision serves to provide justification for the use of physical force in protection of others. Subsection (1) accords an individual defending another the same rights he would have in defending himself and simultaneously imposes the same limitations upon him. It should be said about subsection (1) that a defendant is justified in acting under this provision only

Baldwin's Kentucky Revised Statutes Annotated
Title L. Kentucky Penal Code
Chapter 503. General Principles of Justification (Refs & Annos)

KRS § 503.080

503.080 Protection of property

Effective: July 12, 2006

Currentness

- (1) The use of physical force by a defendant upon another person is justifiable when the defendant believes that such force is immediately necessary to prevent:
 - (a) The commission of criminal trespass, robbery, burglary, or other felony involving the use of force, or under those circumstances permitted pursuant to KRS 503.055, in a dwelling, building or upon real property in his possession or in the possession of another person for whose protection he acts; or
 - (b) Theft, criminal mischief, or any trespassory taking of tangible, movable property in his possession or in the possession of another person for whose protection he acts.
- (2) The use of deadly physical force by a defendant upon another person is justifiable under subsection (1) only when the defendant believes that the person against whom such force is used is:
 - (a) Attempting to dispossess him of his dwelling otherwise than under a claim of right to its possession; or
 - (b) Committing or attempting to commit a burglary, robbery, or other felony involving the use of force, or under those circumstances permitted pursuant to KRS 503.055, of such dwelling; or
 - (c) Committing or attempting to commit arson of a dwelling or other building in his possession.
- (3) A person does not have a duty to retreat if the person is in a place where he or she has a right to be.

Credits

HISTORY: 2006 c 192, § 5, eff. 7-12-06; 1974 c 406, § 33, eff. 1-1-75

Editors' Notes

KENTUCKY CRIME COMMISSION/LRC COMMENTARY

1974:

West's North Dakota Century Code Annotated
Constitution of North Dakota
Article I. Declaration of Rights (Refs & Annos)

NDCC Const. Art. 1, § 25

Section 25.

Currentness

1. To preserve and protect the right of crime victims to justice, to ensure crime victims a meaningful role throughout the criminal and juvenile justice systems, and to ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than the protections afforded to criminal defendants and delinquent children, all victims shall be entitled to the following rights, beginning at the time of their victimization:

- a. The right to be treated with fairness and respect for the victim's dignity.
- b. The right to be free from intimidation, harassment, and abuse.
- c. The right to be reasonably protected from the accused and any person acting on behalf of the accused.
- d. The right to have the safety and welfare of the victim and the victim's family considered when setting bail or making release decisions.
- e. The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information about the victim, and to be notified of any request for such information or records.
- f. The right to privacy, which includes the right to refuse an interview, deposition, or other discovery request made by the defendant, the defendant's attorney, or any person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interaction to which the victim consents. Nothing in this section shall abrogate a defendant's sixth amendment rights under the Constitution of the United States nor diminish the state's disclosure obligations to a defendant.
- g. The right to reasonable, accurate, and timely notice of, and to be present at, all proceedings involving the criminal or delinquent conduct, including release, plea, sentencing, adjudication, and disposition, and any proceeding during which a right of the victim is implicated.
- h. The right to be promptly notified of any release or escape of the accused.

- i. The right to be heard in any proceeding involving release, plea, sentencing, adjudication, disposition, or parole, and any proceeding during which a right of the victim is implicated.
- j. The right, upon request, to confer with the attorney for the government.
- k. The right to provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any presentence or disposition investigation or compiling any presentence investigation report or recommendation regarding, and to have any such information considered in any sentencing or disposition recommendations.
- l. The right, upon request, to receive a copy of any report or record relevant to the exercise of a victim's right, except for those portions made confidential by law or unless a court determines disclosure would substantially interfere with the investigation of a case, and to receive a copy of any presentence report or plan of disposition when available to the defendant or delinquent child.
- m. The right, upon request, to the prompt return of the victim's property when no longer needed as evidence in the case.
- n. The right to full and timely restitution in every case and from each offender for all losses suffered by the victim as a result of the criminal or delinquent conduct. All monies and property collected from any person who has been ordered to make restitution shall be first applied to the restitution owed to the victim before paying any amounts owed to the government.
- o. The right to proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related post-judgment proceedings.
- p. The right, upon request, to be informed of the conviction, adjudication, sentence, disposition, place, and time of incarceration, detention, or other disposition of the offender, any scheduled release date of the offender, and the release of or the escape by the offender from custody or commitment.
- q. The right, upon request, to be informed in a timely manner of all post-judgment processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. The parole authority shall extend the right to be heard to any person harmed by the offender.
- r. The right, upon request, to be informed in a timely manner of any pardon, commutation, reprieve, or expungement procedures, to provide information to the governor, the court, any pardon board, and other authority in these procedures, and to have that information considered before a decision is made, and to be notified of such decision in advance of any release of the offender.
- s. The right to be informed of these rights, and to be informed that victims can seek the advice of an attorney with respect to their rights. This information shall be made available to the general public and provided to all crime victims in what is referred to as a Marsy's Card.

2. The victim, the retained attorney of the victim, a lawful representative of the victim, or the attorney for the government upon request of the victim may assert and seek enforcement of the rights enumerated in this section and any other right afforded to a victim by law in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right. The court or other authority with jurisdiction shall act promptly on such a request, ensuring that no right is deprived without due process of law, and affording a remedy by due course of law for the violation of any right. The reasons for any decision regarding disposition of a victim's right shall be clearly stated on the record.

3. The granting of these rights to victims shall not be construed to deny or disparage other rights possessed by victims. All provisions of this section apply throughout criminal and juvenile justice processes and are self-enabling. This section does not create any cause of action for damages against the state, any political subdivision of the state, any officer, employee, or agent of the state or of any of its political subdivisions, or any officer or employee of the court.

4. As used in this section, a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. If a victim is deceased, incompetent, incapacitated, or a minor, the victim's spouse, parent, grandparent, child, sibling, grandchild, or guardian, and any person with a relationship to the victim that is substantially similar to a listed relationship, may also exercise these rights. The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

Credits

Init. Measure No. 3, § 1, approved November 8, 2016.

Notes of Decisions (24)

NDCC Const. Art. 1, § 25, ND CONST Art. 1, § 25

The constitution is current with results of the Nov. 3, 2020 general election.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.