

As Amended by House Committee

Session of 2010

HOUSE BILL No. 2432

By Representative Carlson

1-12

10 AN ACT concerning crimes, punishment and criminal procedure; relat-
11 ing to justified threat or use of force; amending K.S.A. 21-3211, 21-
12 3212, **21-3213**, 21-3214, 21-3215, 21-3216, 21-3217, 21-3218 and 21-
13 3219 and repealing the existing sections.

14

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

16 **New Section 1. (a) As used in article 32 of chapter 21 of the**
17 **Kansas Statutes Annotated, and amendments thereto:**

18 (1) “Use of force” means any actual or constructive force, in-
19 cluding, but not limited to, threats, displays or presentations of
20 force directed toward another person or the actual application of
21 force upon another person.

22 (2) “Use of deadly force” means any actual or constructive
23 force described in paragraph (1) which is likely to cause imminent
24 death or great bodily harm.

25 (b) The provisions of this section shall be construed and ap-
26 plied retroactively.

27 **New Sec. 2. (a) For the purposes of K.S.A. 21-3211 and 21-**
28 **3212, and amendments thereto, a person is presumed to have a**
29 **reasonable belief that deadly force is necessary to prevent immi-**
30 **nent death or great bodily harm to such person or another person**
31 **if:**

32 (1) The person against whom the force was used was:

33 (i) In the process of unlawfully or forcefully entering, or had
34 unlawfully or forcefully entered, the dwelling, place of work or
35 occupied vehicle of the person using force; or

36 (ii) had removed or was attempting to remove another person
37 against such other person’s will from the dwelling, place of work
38 or occupied vehicle of the person using force; and

39 (2) the person using force had reason to believe that one of the
40 conditions set forth in paragraph (1) was occurring or had
41 occurred.

42 (b) The presumption set forth in subsection (a) does not apply
43 if:

- 1 **(1) The person against whom the force is used has a right to**
 2 **be in, or is a lawful resident of, the dwelling, place of work or**
 3 **occupied vehicle of the person using force, and there is not an**
 4 **injunction for protection from domestic violence or a written order**
 5 **of no contact against such person;**
 6 **(2) the person sought to be removed is a child, grandchild or**
 7 **is otherwise in the lawful custody or under the lawful guardianship**
 8 **of the person against whom the force is used;**
 9 **(3) the person using force is engaged in or attempting to es-**
 10 **cape from apprehension by law enforcement officers, or is using**
 11 **the dwelling, place of work or occupied vehicle to further a crime**
 12 **or escape from apprehension by law enforcement officers; or**
 13 **(4) the person against whom the force is used is a law enforce-**
 14 **ment officer who enters or attempts to enter a dwelling, place of**
 15 **work or occupied vehicle in the lawful performance of such offi-**
 16 **cer's lawful duties, and the person using force knew or reasonably**
 17 **should have known that the person entering or attempting to enter**
 18 **was a law enforcement officer.**

19 Section ~~2~~ **2**. K.S.A. 21-3211 is hereby amended to read as follows:
 20 21-3211. (a) A person is justified in the ~~threat or~~ use of force ~~against~~
 21 ~~another~~ **upon or toward another person** when and to the extent it
 22 appears to such person and such person reasonably believes that such
 23 ~~threat or use of~~ force is necessary to defend such person or a third person
 24 against such other's imminent use of unlawful force.

25 (b) A person is justified in the ~~threat or~~ use of deadly force **upon or**
 26 **toward another person** under circumstances described in subsection
 27 (a) if such person reasonably believes ~~that such threat or use of~~ deadly
 28 force **upon or toward another person** is necessary to prevent imminent
 29 death or great bodily harm to such person or a third person.

30 (c) Nothing in this section shall require a person to retreat if such
 31 person is ~~threatening or~~ using force **upon or toward another person**
 32 to protect such person or a third person.

33 Sec. ~~2~~ **3**. K.S.A. 21-3212 is hereby amended to read as follows: 21-
 34 3212. (a) A person is justified in the ~~threat or~~ use of force ~~against another~~
 35 **upon or toward another person** when and to the extent that it appears
 36 to such person and such person reasonably believes that such ~~threat or~~
 37 ~~use of~~ force **upon or toward another person** is necessary to prevent or
 38 terminate such other's unlawful entry into or attack upon such person's
 39 dwelling, **place of work** or occupied vehicle.

40 (b) A person is justified in the ~~threat or~~ use of deadly force **upon or**
 41 **toward another person** to prevent or terminate unlawful entry into or
 42 attack upon any dwelling, **place of work** or occupied vehicle if such
 43 person reasonably believes ~~that such threat or use of~~ deadly force **upon**

1 **or toward another person** is necessary to prevent imminent death or
 2 great bodily harm to such person or another.

3 (c) Nothing in this section shall require a person to retreat if such
 4 person is ~~threatening or~~ using force **upon or toward another person**
 5 to protect such person’s dwelling, **place of work** or occupied vehicle.

6 **Sec. 4. K.S.A. 21-3213 is hereby amended to read as follows:**
 7 **21-3213. A person who is lawfully in possession of property other**
 8 **than a dwelling, place of work or occupied vehicle is justified in the**
 9 ~~threat or~~ **use of force against another for the purpose of preventing**
 10 **or terminating an unlawful interference with such property. Only**
 11 **such degree of force or threat thereof as a reasonable man would**
 12 **deem necessary to prevent or terminate the interference may in-**
 13 **entionally be used.**

14 Sec. ~~3~~ **5.** K.S.A. 21-3214 is hereby amended to read as follows: 21-
 15 3214. The justification described in sections 21-3211, 21-3212; and 21-
 16 3213, *and amendments thereto*, is not available to a person who:

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

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

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

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

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

35 Sec. 4. K.S.A. 21-3215 is hereby amended to read as follows: 21-
 36 3215. ~~(1)~~ (a) A law enforcement officer, or any person whom such officer
 37 has summoned or directed to assist in making a lawful arrest, need not
 38 retreat or desist from efforts to make a lawful arrest because of resistance
 39 or threatened resistance to the arrest. Such officer is justified in the ~~threat~~
 40 ~~or~~ use of any force **upon or toward another person** which such officer
 41 reasonably believes to be necessary to effect the arrest and ~~of the threat~~
 42 ~~or~~ use of any force **upon or toward another person** which such officer
 43 reasonably believes to be necessary to defend the officer’s self or another

1 from bodily harm while making the arrest. However, such officer is jus-
 2 tified in ~~threatening or~~ using force **upon or toward another person**
 3 likely to cause death or great bodily harm only when such officer reason-
 4 ably believes that such ~~threat or use of~~ force **upon or toward another**
 5 **person** is necessary to prevent death or great bodily harm to such officer
 6 or another person, or when such officer reasonably believes that such
 7 ~~threat or use of~~ force **upon or toward another person** is necessary to
 8 prevent the arrest from being defeated by resistance or escape and such
 9 officer has probable cause to believe that the person to be arrested has
 10 committed or attempted to commit a felony involving great bodily harm
 11 or is attempting to escape by use of a deadly weapon, or otherwise indi-
 12 cates that such person will endanger human life or inflict great bodily
 13 harm unless arrested without delay.

14 ~~(2)~~ (b) A law enforcement officer making an arrest pursuant to an
 15 invalid warrant is justified in the ~~threat or~~ use of any force **upon or**
 16 **toward another person** which such officer would be justified in ~~threat-~~
 17 ~~ening or~~ using if the warrant were valid, unless such officer knows that
 18 the warrant is invalid.

19 Sec. 5. K.S.A. 21-3216 is hereby amended to read as follows: 21-
 20 3216. ~~(1)~~ (a) A private person who makes, or assists another private person
 21 in making a lawful arrest is justified in the ~~threat or~~ use of any force **upon**
 22 **or toward another person** which ~~he~~ *such person* would be justified in
 23 ~~threatening or~~ using if ~~he~~ *such person* were summoned or directed by a
 24 law enforcement officer to make such arrest, except that ~~he~~ *such person*
 25 is justified in the ~~threat or~~ use of force likely to cause death or great
 26 bodily harm **upon or toward another person** only when ~~he~~ *such person*
 27 reasonably believes that such ~~threat or~~ use of force is necessary to prevent
 28 death or great bodily harm to ~~himself~~ *such person* or another.

29 ~~(2)~~ (b) A private person who is summoned or directed by a law en-
 30 forcement officer to assist in making an arrest which is unlawful, is jus-
 31 tified in the ~~threat or~~ use of any force **upon or toward another person**
 32 which ~~he~~ *such person* would be justified in ~~threatening or~~ using if the
 33 arrest were lawful.

34 Sec. 6. K.S.A. 21-3217 is hereby amended to read as follows: 21-
 35 3217. A person is not authorized to ~~threaten or~~ use force **upon or toward**
 36 **another person** to resist an arrest which ~~he~~ *such person* knows is being
 37 made either by a law enforcement officer or by a private person sum-
 38 moned and directed by a law enforcement officer to make the arrest,
 39 even if the person arrested believes that the arrest is unlawful.

40 Sec. 7. K.S.A. 21-3218 is hereby amended to read as follows: 21-
 41 3218. (a) A person who is not engaged in an unlawful activity and who is
 42 attacked in a place where such person has a right to be has no duty to
 43 retreat and has the right to stand such person's ground and meet force

1 with ~~the threat or~~ use of force **upon or toward another person**.
2 (b) This section shall be part of and supplemental to the Kansas crim-
3 inal code.
4 Sec. 8. K.S.A. 21-3219 is hereby amended to read as follows: 21-
5 3219. (a) A person who ~~threatens or~~ uses force **upon or toward another**
6 **person** which, subject to the provisions of K.S.A. 21-3214, and amend-
7 ments thereto, is justified pursuant to K.S.A. 21-3211, 21-3212 or 21-
8 3213, and amendments thereto, is immune from criminal prosecution and
9 civil action for the ~~threat or~~ use of such force, unless the person against
10 whom force **upon or toward another person** was ~~threatened or~~ used
11 is a law enforcement officer who was acting in the performance of such
12 officer's official duties and the officer identified the officer's self in ac-
13 cordance with any applicable law or the person ~~threatening or~~ using force
14 **upon or toward another person** knew or reasonably should have known
15 that the person was a law enforcement officer. As used in this subsection,
16 "criminal prosecution" includes arrest, detention in custody and charging
17 or prosecution of the defendant.
18 (b) A law enforcement agency may use standard procedures for in-
19 vestigating the ~~threat or~~ use of force **upon or toward another person**
20 as described in subsection (a), but the agency shall not arrest the person
21 for ~~threatening or~~ using force **upon or toward another person** unless
22 it determines that there is probable cause for the arrest.
23 (c) A county or district attorney or other prosecutor may commence
24 a criminal prosecution upon a determination of probable cause.
25 Sec. 9. K.S.A. 21-3211, 21-3212, **21-3213**, 21-3214, 21-3215, 21-
26 3216, 21-3217, 21-3218 and 21-3219 are hereby repealed.
27 Sec. 10. This act shall take effect and be in force from and after its
28 publication in the ~~statute book~~ **Kansas register**.