

REFERENCE TITLE: justification; use of force

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SB 1469

Introduced by
Senators Gould, Pearce R

AN ACT

AMENDING SECTIONS 13-406, 13-411 AND 13-419, ARIZONA REVISED STATUTES;
AMENDING TITLE 13, CHAPTER 4, ARIZONA REVISED STATUTES, BY ADDING SECTION
13-422; RELATING TO JUSTIFICATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 13-406, Arizona Revised Statutes, is amended to read:

13-406. Justification; defense of a third person

A person is justified in threatening or using physical force or deadly physical force against another to protect a third person if, ~~+~~

~~1.~~ under the circumstances as a reasonable person would believe them to be, such person would be justified under section 13-404 or 13-405 in threatening or using physical force or deadly physical force to protect himself against the unlawful physical force or deadly physical force a reasonable person would believe is threatening the third person he seeks to protect. ~~+~~ and

~~2. A reasonable person would believe that such person's intervention is immediately necessary to protect the third person.~~

Sec. 2. Section 13-411, Arizona Revised Statutes, is amended to read:

13-411. Justification; use of force in crime prevention; applicability

A. A person is justified in threatening or using both physical force and deadly physical force against another if and to the extent the person reasonably believes that physical force or deadly physical force is immediately necessary to prevent the other's commission of arson of an occupied structure under section 13-1704, burglary in the second or first degree under section 13-1507 or 13-1508, kidnapping under section 13-1304, manslaughter under section 13-1103, second or first degree murder under section 13-1104 or 13-1105, sexual conduct with a minor under section 13-1405, sexual assault under section 13-1406, child molestation under section 13-1410, armed robbery under section 13-1904 or aggravated assault under section 13-1204, subsection A, paragraphs 1 and 2.

B. There is no duty to retreat before threatening or using physical force or deadly physical force justified by subsection A of this section.

C. A person is presumed to be acting reasonably for the purposes of this section if the person is acting to prevent WHAT THE PERSON REASONABLY BELIEVES IS the IMMINENT OR ACTUAL commission of any of the offenses listed in subsection A of this section.

D. This section ~~is not limited to~~ INCLUDES the use or threatened use of physical FORCE or deadly physical force in a person's home, residence, place of business, land the person owns or leases, conveyance of any kind, or any other place in this state where a person has a right to be.

Sec. 3. Section 13-419, Arizona Revised Statutes, is amended to read:

13-419. Presumptions; defense of a home or occupied vehicle; exceptions; definitions

A. A person is presumed to ~~be acting~~ reasonably BELIEVE THAT THE THREAT OR USE OF PHYSICAL FORCE OR DEADLY FORCE IS IMMEDIATELY NECESSARY for the purposes of sections 13-404 through 13-408, and section 13-418 AND SECTION 13-421 if the person KNOWS OR HAS REASON TO BELIEVE THAT THE PERSON

1 AGAINST WHOM PHYSICAL FORCE OR DEADLY FORCE IS THREATENED OR USED is ~~acting~~
 2 ~~against another person who~~ unlawfully or forcefully ~~enters~~ ENTERING or HAS
 3 UNLAWFULLY OR FORCEFULLY entered AND IS PRESENT IN the person's residential
 4 structure or occupied vehicle. ~~, except that the presumption does not apply~~
 5 ~~if:~~

6 B. FOR THE PURPOSES OF SECTIONS 13-404 THROUGH 13-408, SECTION 13-418
 7 AND SECTION 13-421, A PERSON WHO IS UNLAWFULLY OR FORCEFULLY ENTERING OR WHO
 8 HAS UNLAWFULLY OR FORCEFULLY ENTERED AND IS PRESENT IN A RESIDENTIAL
 9 STRUCTURE OR OCCUPIED VEHICLE IS PRESUMED TO POSE AN IMMINENT THREAT OF
 10 UNLAWFUL DEADLY HARM TO ANY PERSON WHO IS IN THE RESIDENTIAL STRUCTURE OR
 11 OCCUPIED VEHICLE.

12 C. THE PRESUMPTIONS IN SUBSECTIONS A AND B OF THIS SECTION DO NOT
 13 APPLY IF:

14 1. The person against whom physical force or deadly physical force was
 15 THREATENED OR used has the right to be in or is a lawful resident of the
 16 residential structure or occupied vehicle, including an owner, lessee,
 17 invitee or titleholder, and an order of protection or injunction against
 18 harassment has not been filed against that person.

19 2. The person against whom ~~the~~ physical force or deadly physical force
 20 was THREATENED OR used is the parent or grandparent, or has legal custody or
 21 guardianship, of a child or grandchild sought to be removed from the
 22 residential structure or occupied vehicle.

23 3. The person who THREATENS OR uses physical force or deadly physical
 24 force is engaged in an unlawful activity or is using the residential
 25 structure or occupied vehicle to further an unlawful activity.

26 4. The person against whom ~~the~~ physical force or deadly physical force
 27 was THREATENED OR used is a law enforcement officer who enters or attempts to
 28 enter a residential structure or occupied vehicle in the performance of
 29 official duties.

30 ~~B.~~ D. For the purposes of this section:

31 1. "Residential structure" has the same meaning prescribed in section
 32 13-1501.

33 2. "Vehicle" means a conveyance of any kind, whether or not motorized,
 34 that is designed to transport persons or property.

35 Sec. 4. Title 13, chapter 4, Arizona Revised Statutes, is amended by
 36 adding section 13-422, to read:

37 13-422. Criminal prosecution; attorney fees; costs; special
 38 verdict

39 A. A PERSON SHALL NOT BE SUBJECT TO CRIMINAL PROSECUTION FOR ENGAGING
 40 IN CONDUCT THAT IS OTHERWISE JUSTIFIED PURSUANT TO SECTIONS 13-404, 13-405,
 41 13-406, 13-407, 13-408, 13-411, 13-415, 13-418, 13-419 AND 13-421.

42 B. IN A CRIMINAL ACTION, IF THE TRIER OF FACT FINDS THE DEFENDANT NOT
 43 GUILTY BECAUSE THE DEFENDANT'S CONDUCT IS OTHERWISE JUSTIFIED PURSUANT
 44 SECTION 13-404, 13-405, 13-406, 13-407, 13-408, 13-411, 13-415, 13-418,

1 13-419 OR 13-421, THE TRIER OF FACT SHALL DETERMINE WHETHER TO MAKE AN AWARD
2 PURSUANT TO SUBSECTION C OF THIS SECTION.

3 C. IF THE TRIER OF FACT FINDS BY A PREPONDERANCE OF EVIDENCE THAT THE
4 PERSON WAS ENGAGING IN CONDUCT OTHERWISE JUSTIFIED PURSUANT TO SECTION
5 13-404, 13-405, 13-406, 13-407, 13-408, 13-411, 13-415, 13-418, 13-419 OR
6 13-421, THE TRIER OF FACT SHALL AWARD THE DEFENDANT ALL REASONABLE COSTS
7 INCURRED IN THE DEFENDANT'S DEFENSE, INCLUDING LOSS OF INCOME, LEGAL FEES,
8 REIMBURSEMENT TO ANY COURT-APPOINTED COUNSEL OR PUBLIC DEFENDER, PRESENTATION
9 OF EXPERT WITNESSES AND COURT COSTS. THIS AWARD IS NOT AN INDEPENDENT CAUSE
10 OF ACTION. THE JUDGE SHALL DETERMINE THE AMOUNT OF THE AWARD, AND THE AWARD
11 SHALL BE PAID FROM THE BUDGET OF THE PROSECUTING AGENCY.

12 D. NOTWITHSTANDING SUBSECTION C OF THIS SECTION, IF THE TRIER OF FACT
13 DETERMINES BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT WAS ENGAGED
14 IN A CRIMINAL ACT THAT WAS SUBSTANTIALLY RELATED TO THE EVENTS THAT GAVE RISE
15 TO THE PROSECUTION, THE JUDGE MAY DENY OR REDUCE THE AWARD. IN DETERMINING
16 TO REDUCE AN AWARD, THE JUDGE SHALL CONSIDER THE SERIOUSNESS OF THE CRIMINAL
17 ACT.

18 E. AN AWARD RECEIVED PURSUANT TO THIS SECTION DOES NOT PRECLUDE THE
19 DEFENDANT FROM SEEKING ANY OTHER RELIEF FROM THIS STATE OR ANY POLITICAL
20 SUBDIVISION OF THIS STATE.

21 F. IN MAKING THE DETERMINATIONS PURSUANT TO SUBSECTIONS C AND D OF
22 THIS SECTION, THE TRIER OF FACT SHALL RETURN A SPECIAL VERDICT IN
23 SUBSTANTIALLY THE FOLLOWING FORM:

24 1. WAS THE DEFENDANT, AT THE TIME OF THE EVENTS ALLEGED IN THIS CASE,
25 MORE LIKELY THAN NOT:

26 (a) PROTECTING HIMSELF?

27 (b) PROTECTING HIS FAMILY?

28 (c) PROTECTING HIS PROPERTY?

29 (d) PROTECTING ANOTHER PERSON WHO WAS NOT A MEMBER OF THE DEFENDANT'S
30 FAMILY?

31 (e) ACTING TO PREVENT THE IMMINENT COMMISSION OF ARSON OF AN OCCUPIED
32 STRUCTURE, FIRST OR SECOND DEGREE BURGLARY, KIDNAPPING, SEXUAL CONDUCT WITH A
33 MINOR, SEXUAL ASSAULT, CHILD MOLESTATION OR ARMED ROBBERY?

34 2. WAS THE DEFENDANT'S DEFENSIVE ACTION NECESSARY BECAUSE OF ANY
35 CRIMINAL ACT COMMITTED BY THE DEFENDANT?