



2007 ASSEMBLY BILL 35

January 24, 2007 - Introduced by Representatives OWENS, ALBERS, FRISKE, GRONEMUS, GUNDERSON, HAHN, HINES, JESKEWITZ, KERKMAN, F. LASEE, MURSAU, MUSSER, NASS, OTT, PETROWSKI, VOS and VUKMIR, cosponsored by Senators ROESSLER and DECKER. Referred to Committee on Criminal Justice.

1 **AN ACT to create** 939.48 (1m) of the statutes; **relating to:** the privilege of
2 self-defense.

Analysis by the Legislative Reference Bureau

In general, a person who uses force in self-defense or in the defense of another person may not be convicted of a crime stemming from that use of force. This law applies only when: 1) the amount of force used is reasonable; and 2) the person uses that force to prevent or stop what he or she reasonably believes is an unlawful interference with himself or herself or another person (such as the crime of battery). Current law specifies that a person may use force that is intended or likely to cause the death of or great bodily harm to another individual only if the person reasonably believes that using such force is necessary to prevent the imminent death of or great bodily harm to himself or herself or another person.

Under this bill, if a person used defensive force that was intended or likely to cause death or great bodily harm, the court must presume that the person reasonably believed that the force was necessary to prevent death or great bodily harm if: 1) the individual against whom the force was used was in the process of unlawfully and forcibly entering, or had already unlawfully and forcefully entered, the residence of the person who used the force; 2) the person was present in that residence; and 3) the person knew or had reason to believe that an unlawful and forcible entry was occurring or had occurred. This presumption, however, does not apply if: 1) the person who used the force was engaged in an unlawful activity or was using his or her residence to further an unlawful activity; or 2) the individual against whom the force was used had identified himself or herself as a peace officer (or was or should

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have been known to be a peace officer) and was entering the residence in the performance of his or her official duties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 939.48 (1m) of the statutes is created to read:

2 939.48 **(1m)** (a) If an actor intentionally used force that was intended or likely
3 to cause death or great bodily harm, the court shall presume that the actor
4 reasonably believed that the force was necessary to prevent imminent death or great
5 bodily harm to himself or herself if the actor makes such a claim under sub. (1) and
6 any of the following applies:

7 1. The person against whom the force was used was in the process of unlawfully
8 and forcibly entering the actor's residence, the actor was present in the residence,
9 and the actor knew or had reason to believe that an unlawful and forcible entry was
10 occurring.

11 2. The person against whom the force was used was in the actor's residence
12 after unlawfully and forcibly entering it, the actor was present in the residence, and
13 the actor knew or had reason to believe that the person had unlawfully and forcibly
14 entered the residence.

15 (b) The presumption described in par. (a) does not apply if any of the following
16 applies:

17 1. The actor was engaged in an unlawful activity or was using his or her
18 residence to further an unlawful activity at the time.

19 2. The person against whom the force was used was a peace officer who entered
20 or attempted to enter the actor's residence in the performance of his or her official
21 duties. This subdivision applies only if at least one of the following applies:

