

2009 DRAFTING REQUEST

Assembly Amendment (AA-AB193)

Received: **08/24/2009**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Ann Hraychuck (608) 267-2365**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Courts - immunity liability**

Extra Copies: **Don Dyke**

Submit via email: **YES**

Requester's email: **Rep.Hraychuck@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Civil defense if castle doctrine defense is successful

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 08/27/2009	jdye 08/28/2009		_____			
/P1			mduchek 08/31/2009	_____	sbasford 08/31/2009		
/1	phurley 10/05/2009	jdye 10/06/2009	jfrantze 10/06/2009	_____	lparisi 10/06/2009	lparisi 10/06/2009	

FE Sent For:

<END>

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/P1		1 10/6 jld	mduchek 08/31/2009	_____	sbasford 08/31/2009		
			Jb 10/6	_____			

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/?	phurley	PI 8/28 JLD	MD 8/28 8/31	MD JF			
FE Sent For:							
<END>							

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DRAFT

1

ASSEMBLY AMENDMENT, TO 2009 ASSEMBLY BILL 193

2

At the locations indicated, amend the bill as follows:

3

1. Page 2, line 1: before that line insert:

reasonable

4

SECTION 1. 895.61 of the statutes is created to read:

5

895.61 Use of force in response to unlawful and forcible entry into residence; civil

6

liability immunity. (1) IMMUNITY. Except as provided in sub. (3), a person is immune from

7

civil liability for intentionally using force that is intended or likely to cause death or great

8

bodily harm if the person reasonably believed that the force was necessary to prevent

9

imminent death or great bodily harm to himself or herself *or to a 3rd person.* and either of the following applies: X

10

(a) The person against whom the force was used was in the process of unlawfully and

11

forcibly entering the actor's residence, the actor was present in the residence, and the actor

12

knew or had reason to believe that an unlawful and forcible entry was occurring.

13

(b) The person against whom the force was used was in the actor's residence after

14

unlawfully and forcibly entering, the actor was present in the residence, and the actor knew

15

or had reason to believe the person had unlawfully and forcibly entered the residence.

16

(2) PRESUMPTION. An actor is presumed to have reasonably believed that the force was

17

necessary to prevent imminent death or great bodily harm to himself or herself if either sub.

18

(1) (a) or (b) applies.

[Handwritten bracket grouping lines 16-18]

1 (3) EXCEPTIONS TO PRESUMPTION. The presumption under sub. (2) does not apply if
2 either of the following applies:

3 (a) The actor was engaged in ~~an unlawful~~ ^{criminal} activity or was using his or her
4 residence to further ~~an unlawful~~ ^{criminal} activity at the time. X

5 (b) The person against whom the force was used was a peace officer who entered or
6 attempted to enter the actor's residence in the performance of his or her official duties and at
7 least one of the following applies:

8 1. The officer identified himself or herself to the actor before the force described in sub.
9 (1) was used by the actor.

10 2. The actor knew or reasonably should have known that the person entering or
11 attempting to enter his or her residence was a peace officer.

12 2. Page 2, line 1: substitute "SECTION 2" for "SECTION 1".

13 3. ^(END) *Initial App clause*
Uses of force that occur on
effective date X



2009 ASSEMBLY BILL 193

April 2, 2009 - Introduced by Representatives HRAYCHUCK, DANOU, VRUWINK, MURSAU, FRISKE, VAN ROY, BALLWEG, SUDER, STRACHOTA, PETROWSKI, VUKMIR, ZIPPERER, DAVIS, BIES, KLEEFISCH, GUNDERSON, VOS, SPANBAUER, KERKMAN, NERISON, LEMAHIEU, KESTELL, HONADEL, RHOADES, ZIGMUNT, RIPP, JORGENSEN, TAUCHEN, ROTH, KAUFERT and HUEBSCH, cosponsored by Senators HOLPERIN, VINEHOUT, DECKER, PLALE, SCHULTZ, LAZICH, LEIBHAM, GROTHMAN, A. LASEE, KANAVAS, DARLING, KAPANKE, HARS DORF and HOPPER. Referred to Committee on Personal Privacy.

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

ASSEMBLY BILL 193

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:

INSE 1

7 A. (a) 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. (L)

11 B. 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. (4). EXCEPTIONS TO PRESUMPTION.

15 The presumption (described in par. (a)) does not apply if any of the following
16 applies: under sub. (1)

INSE 2

17 A. (a) 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:

ASSEMBLY BILL 193

1 a. The officer identified himself or herself to the actor before the force described
2 in par. (a) was used by the actor.

3 b. The actor knew or reasonably should have known that the person entering
4 or attempting to enter his or her residence was a peace officer.

5 **(END)**



PI

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Jld

✓ **PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**
ASSEMBLY AMENDMENT ,
TO 2009 ASSEMBLY BILL 193

8-27-09

1 At the locations indicated, amend the bill as follows: ✓

2 1. Page 2, line 1: before that line insert: ✓

3

“SECTION 1m. 895.61 of the statutes is created to read: ✓

4

895.61 Use of force in response to unlawful and forcible entry into a ✓

5 residence; civil liability immunity. (1) In this section, “actor” means a person ✓
6 who uses force that is intended or likely cause death or great bodily harm to another ✓
7 person. ✓

8

(2) IMMUNITY Except as provided in sub. (4), an actor is immune from civil ✓

9 liability arising out of his or her use of force that is intended or likely to cause death ✓
10 or great bodily harm if the actor reasonably believed that the force was necessary to ✓
11 prevent imminent death or great bodily harm to himself or herself or to another ✓
12 person and either of the following applies: ✓

1 (a) The person against whom the force was used was in the process of
2 unlawfully and forcibly entering the actor's residence, the actor was present in the
3 residence, and the actor knew or had reason to believe that an unlawful and forcible
4 entry was occurring.

5 (b) The person against whom the force was used was in the actor's residence
6 after unlawfully and forcibly entering it, the actor was present in the residence, and
7 the actor knew or had reason to believe that the person had unlawfully and forcibly
8 entered the residence.

9 (3) An actor is presumed to have reasonably believed that the force was
10 necessary to prevent imminent death or great bodily harm to himself or herself or
11 to another person if either sub. (1) (a) or (b) applies.

12 (4) The presumption described in sub. (3) does not apply if any of the following
13 are true:

14 (a) The actor was engaged in an unlawful activity or was using his or her
15 residence to further an unlawful activity at the time he or she used the force
16 described in sub. (2).

17 (b) The person against whom the force was used was a peace officer who
18 entered or attempted to enter the actor's residence in the performance of his or her
19 official duties. This subdivision ^{paragraph} applies only if at least one of the following applies:

20 1. The officer identified himself or herself to the actor before the force described
21 in sub. (2) was used by the actor.

22 2. The actor knew or reasonably should have known that the person entering
23 or attempting to enter his or her residence was a peace officer.

24 2. Page 2, line 1: delete "1" and substitute "1r".

SECTION
CS (B)

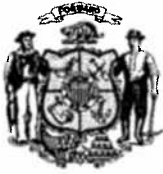
1
2
3
4
5

3. Page 3, line 4: after that line insert: ✓

“SECTION 1v. Initial applicability. ✓

(1) This act first applies to a use of force ✓ that occurs on the effective date of this subsection.” ✓

(END)



SOON

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

ASSEMBLY AMENDMENT ,
TO 2009 ASSEMBLY BILL 193

10-5-09

1 At the locations indicated, amend the bill as follows: ✓

2 **1.** Page 2, line 1: before that line insert:

3 "SECTION 1m. 895.62 of the statutes is created to read:

4 **895.62 Use of force in response to unlawful and forcible entry into a**
5 **residence; civil liability immunity. (1)** In this section, "actor" means a person
6 who uses force that is intended or likely cause death or great bodily harm to another
7 person.

8 **(2)** Except as provided in sub. (4), an actor is immune from civil liability arising
9 out of his or her use of force that is intended or likely to cause death or great bodily
10 harm if the actor reasonably believed that the force was necessary to prevent
11 imminent death or great bodily harm to himself or herself or to another person and
12 either of the following applies:

1 (a) The person against whom the force was used was in the process of
2 unlawfully and forcibly entering the actor’s residence, the actor was present in the
3 residence, and the actor knew or had reason to believe that an unlawful and forcible
4 entry was occurring.

5 (b) The person against whom the force was used was in the actor’s residence
6 after unlawfully and forcibly entering it, the actor was present in the residence, and
7 the actor knew or had reason to believe that the person had unlawfully and forcibly
8 entered the residence.

9 (3) An actor is presumed to have reasonably believed that the force was
10 necessary to prevent imminent death or great bodily harm to himself or herself or
11 to another person if either sub. (2) (a) or (b) applies.

12 (4) The presumption described in sub. (3) does not apply if any of the following
13 are true:

14 (a) The actor was engaged in an unlawful activity or was using his or her
15 residence to further an unlawful activity at the time he or she used the force
16 described in sub. (2). *a criminal ✓*
a criminal ✓

17 (b) The person against whom the force was used was a peace officer who entered
18 or attempted to enter the actor’s residence in the performance of his or her official
19 duties. This paragraph applies only if at least one of the following applies:

20 1. The officer identified himself or herself to the actor before the force described
21 in sub. (2) was used by the actor.

22 2. The actor knew or reasonably should have known that the person entering
23 or attempting to enter his or her residence was a peace officer.”.

24 **2.** Page 2, line 1: delete “SECTION 1” and substitute “SECTION 1r”.

