

**2009 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-AB193)**

Received: 10/21/2009

Received By: phurley

Wanted: As time permits

Identical to LRB:

For: Marlin Schneider (608) 266-0215

By/Representing:

This file may be shown to any legislator: NO

Drafter: phurley

May Contact:

Addl. Drafters:

Subject: Criminal Law - guns and weapons  
Criminal Law - procedure

Extra Copies: Heidi Frechette

Submit via email: YES

Requester's email: Rep.Schneider@legis.wisconsin.gov

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Castle doctrine

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**Instructions:**

Do a sub that incorporates the sub to AB 193 and amendment 5 from Rep. Gundrum

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**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 10/21/2009	wjackson 10/21/2009		_____			
	phurley 10/21/2009	jdye 10/22/2009		_____			
/1			rschluet 10/22/2009	_____	cduerst 10/22/2009	cduerst 10/22/2009	

FE Sent For:

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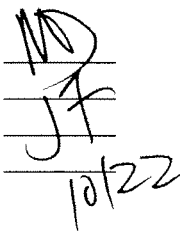
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Do a sub that incorporates the sub to AB 193 and amendment 5 from Rep. Gundrum

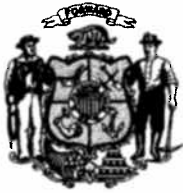
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/?	phurley 10/21/2009 phurley	wjackson 10/21/2009					

FE Sent For:

<END>



## 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.

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### *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.

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*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:





State of Wisconsin  
2009 - 2010 LEGISLATURE

LRBa0504/1  
PJH:cjs:md

**ASSEMBLY AMENDMENT 5,  
TO 2009 ASSEMBLY BILL 193**

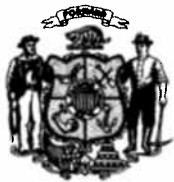
October 13, 2009 – Offered by Representative GUNDRUM.

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

2 **1.** Page 2, line 9: delete “had reason to believe” and substitute “reasonably  
3 believed”.

4 **2.** Page 2, line 13: delete “had reason to believe” and substitute “reasonably  
5 believed”.

6 (END)



State of Wisconsin  
2009 - 2010 LEGISLATURE

50170/1  
LRB:01/17/09  
PJH:jld:jf  
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keep

ASSEMBLY SUBSTITUTE AMENDMENT,  
TO 2009 ASSEMBLY BILL 193

J-note  
10/2/09

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Regen

1 AN ACT to create 895.62 and 939.48 (1m) of the statutes; relating to: the  
2 privilege of 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 substitute amendment, 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 to himself or herself or to another person 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

reasonably believed

engaged in a criminal activity or was using his or her residence to further a criminal activity; or 2) the individual against whom the force was used had identified himself or herself as a peace officer (or was or should have been known to be a peace officer) and was entering the residence in the performance of his or her official duties.

Under the substitute amendment, a person who uses force that is intended or likely to cause death or great bodily harm is immune from civil liability if the person reasonably believed that the force was necessary to prevent death or great bodily harm to himself or herself or to another person and the individual against whom the force was used was in the process of unlawfully and forcibly entering, or had already forcibly entered, the residence of the person who used the force, and the person who used the force was present in the residence and knew or had reason to believe that an unlawful and forcible entry was occurring or had occurred. Under the substitute amendment for purposes of civil immunity, a person is not presumed to have reasonably believed that the force was necessary if: 1) the person who used the force was engaged in a criminal activity or was using his or her residence to further a criminal activity; or 2) the individual against whom the force was used had identified himself or herself as a peace officer (or was or should have been known to be a peace officer) and was entering the residence in the performance of his or her official duties.

Under the substitute amendment, if a court finds that person who is sued in civil court is immune from liability, the person is entitled to attorney fees, court costs, compensation for income loss, and other expenses the person incurred to defend himself or herself against the civil action.

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

1           **SECTION 1.** 895.62 of the statutes is created to read:

2           **895.62 Use of force in response to unlawful and forcible entry into a**  
3 **residence; civil liability immunity.** (1) In this section, “actor” means a person  
4 who uses force that is intended or likely cause death or great bodily harm to another  
5 person.

6           (2) Except as provided in sub. (4), an actor is immune from civil liability arising  
7 out of his or her use of force that is intended or likely to cause death or great bodily  
8 harm if the actor reasonably believed that the force was necessary to prevent  
9 imminent death or great bodily harm to himself or herself or to another person and  
10 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 a criminal activity or was using his or her  
15 residence to further a criminal activity at the time he or she used the force described  
16 in sub. (2).

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           (5) In any civil action, if a court finds that a person is immune from civil liability  
25 under sub. (2), the court shall award the person reasonable attorney fees, costs,

1 compensation for loss of income, and other costs of the litigation reasonably incurred  
2 by the person.

3 SECTION 2. 939.48 (1m) of the statutes is created to read:

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

9 1. The person against whom the force was used was in the process of unlawfully  
10 and forcibly entering the actor's residence, the actor was present in the residence,  
11 and the actor knew or had reason to believe <sup>or reasonably believed</sup> that an unlawful and forcible entry was  
12 occurring.

13 2. The person against whom the force was used was in the actor's residence  
14 after unlawfully and forcibly entering it, the actor was present in the residence, and  
15 the actor knew or had reason to believe <sup>or reasonably believed</sup> that the person had unlawfully and forcibly  
16 entered the residence.

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

19 1. The actor was engaged in a criminal activity or was using his or her residence  
20 to further a criminal activity at the time.

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

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

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

3 **SECTION 3. Initial applicability.**

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

6 (END)

d-note  
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**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0170/?dn

PJA...  
JLD

Representative ~~Haychuck~~

Schneider ✓  
amendment  
2009  
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Representative Haychuck's

\* This draft incorporates the substitute to AB-193 that I drafted for your office (LRB s0157/1) plus AA5 to AB193. Please let me know if this does not reflect your intent.

Peggy Hurley  
Legislative Attorney  
Phone: (608) 266-8906  
E-mail: peggy.hurley@legis.wisconsin.gov

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0170/1dn  
PJH:jld:rs

October 22, 2009

Representative Schneider,

This draft incorporates the substitute amendment to 2009 AB-193 that I drafted for Representative Hraychuck's office (LRBs0157/1) plus AA 5 to AB-193. Please let me know if this does not reflect your intent.

Peggy Hurley  
Legislative Attorney  
Phone: (608) 266-8906  
E-mail: [peggy.hurley@legis.wisconsin.gov](mailto:peggy.hurley@legis.wisconsin.gov)