

116TH CONGRESS
2D SESSION

H. R. 7716

To establish defenses against crimes of violence, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 21, 2020

Mr. SMITH of Missouri (for himself, Mr. GRAVES of Missouri, Mr. LONG, and Mr. LUETKEMEYER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish defenses against crimes of violence, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Family and
5 Private Property Defense Act”.

6 **SEC. 2. DEFENSES AGAINST CRIMES OF VIOLENCE.**

7 (a) IN GENERAL.—Chapter 1 of title 18, United
8 States Code, is amended by adding at the end the fol-
9 lowing:

1 **“§ 28. Defense of self or others**

2 “(a) DEFENSE.—

3 “(1) JUSTIFIABLE USE OF FORCE.—It is an af-
4 firmative defense against any charge for a crime of
5 violence that the defendant only used physical force
6 upon another person to the extent that the defend-
7 ant reasonably believed such force to be necessary to
8 defend the defendant or a third person from what
9 the defendant reasonably believes to be the use or
10 imminent use of unlawful force by such other per-
11 son.

12 “(2) JUSTIFIABLE USE OF DEADLY FORCE.—It
13 is an affirmative defense against any charge for a
14 crime of violence that the defendant only used dead-
15 ly force upon another person—

16 “(A) to the extent that the defendant rea-
17 sonably believed such force to be necessary to
18 defend the defendant or a third person from
19 what the defendant reasonably believes to be
20 the use or imminent use of unlawful force by
21 such other person;

22 “(B) if such person unlawfully enters, re-
23 mains after unlawfully entering, or attempts to
24 unlawfully enter a dwelling, residence, or vehicle
25 lawfully occupied by such person; or

1 “(C) if such person unlawfully enters, re-
2 mains after unlawfully entering, or attempts to
3 unlawfully enter private property that is owned
4 or leased by an individual, or is occupied by an
5 individual who has been given specific authority
6 by the property owner to occupy the property,
7 claiming a justification of using protective force
8 under this section.

9 “(3) NO DUTY TO RETREAT.—The defendant
10 has no duty to retreat—

11 “(A) from a dwelling, residence, or vehicle
12 where the person is not unlawfully entering or
13 unlawfully remaining;

14 “(B) from private property that is owned
15 or leased by such individual; or

16 “(C) if the defendant is in any other loca-
17 tion such defendant has the right to be.

18 “(b) APPLICATION.—

19 “(1) IN GENERAL.—A defense under subsection
20 (a) shall not apply if the defendant is the initial ag-
21 gressor, unless—

22 “(A) the defendant has withdrawn from
23 the encounter and effectively communicated
24 such withdrawal to such other person but the

1 latter persists in continuing the incident by the
2 use or threatened use of unlawful force;

3 “(B) the defendant is a law enforcement
4 officer; or

5 “(C) the aggressor’s actions are justified
6 under any other provision of law.

7 “(2) THIRD PARTY.—A defense under sub-
8 section (a) shall not apply if, under the circum-
9 stances as the defendant reasonably believes them to
10 be, the person whom the defendant is seeking to pro-
11 tect would not be justified in using such protective
12 force.

13 “(3) FELONY.—The defendant was attempting
14 to commit, committing, or escaping after the com-
15 mission of a forcible felony.

16 “(c) PHYSICAL RESTRAINT.—The defenses under
17 this section shall extend to the use of physical restraint
18 as protective force provided that the defendant takes all
19 reasonable measures to terminate the restraint as soon as
20 it is reasonable to do so.

21 “(d) BURDEN.—The defendant shall have the burden
22 of raising any defense under this section. If a defendant
23 asserts that defendant’s use of force is described under
24 subsection (a)(2), the burden shall then be on the Govern-
25 ment to prove beyond a reasonable doubt that the defend-

1 ant did not reasonably believe that the use of such force
2 was necessary to defend against what the defendant rea-
3 sonably believed was the use or imminent use of unlawful
4 force.

5 **“§ 29. Defense of property**

6 “(a) DEFENSE.—It is an affirmative defense against
7 any charge for a crime of violence that the defendant only
8 used physical force upon another person to the extent that
9 the defendant reasonably believed such force to be nec-
10 essary to prevent what the defendant reasonably believes
11 to be the commission or attempted commission by such
12 person of stealing, property damage or tampering in any
13 degree.

14 “(b) APPLICATION.—A defense under subsection (a)
15 shall not apply if the defendant uses deadly force unless
16 authorized under subsection (a).

17 “(c) PHYSICAL RESTRAINT.—The defenses under
18 this section shall extend to the use of physical restraint
19 as protective force provided that the defendant takes all
20 reasonable measures to terminate the restraint as soon as
21 it is reasonable to do so.

22 “(d) BURDEN.—The defendant shall have the burden
23 of raising any defense under this section.

1 **“§ 30. Battered spouse defense**

2 “(a) DEFENSE.—Evidence that the actor was suf-
3 fering from the battered spouse syndrome shall be admis-
4 sible upon the issue of whether the actor lawfully acted
5 in self-defense or defense of another.

6 “(b) PROCEDURE.—If the defendant proposes to
7 offer evidence of the battered spouse syndrome, the de-
8 fendant shall file written notice thereof with the court in
9 advance of trial. Thereafter, the court, upon motion of
10 the Government, shall appoint one or more private psychi-
11 atrists or psychologists or physicians with a minimum of
12 one year of training or experience in providing treatment
13 or services to intellectually disabled or mentally ill individ-
14 uals, who are neither employees nor contractors of the de-
15 partment of mental health for the purposes of performing
16 the examination in question, to examine the accused, or
17 shall direct the director of the department of mental
18 health, or his designee, to have the accused so examined
19 by one or more psychiatrists or psychologists or physicians
20 with a minimum of one year of training or experience in
21 providing treatment or services to intellectually disabled
22 or mentally ill individuals designated by the director, or
23 his designee, for the purpose of examining the defendant.
24 No private psychiatrist, psychologist, or physician shall
25 be appointed by the court unless he has consented to act.
26 The examinations ordered shall be made at such time

1 and place and under such conditions as the court deems
2 proper, except that if the order directs the director of the
3 department of mental health to have the accused exam-
4 ined, the director, or his designee, shall determine the rea-
5 sonable time, place and conditions under which the exam-
6 ination shall be conducted. The order may include provi-
7 sions for the interview of witnesses.

8 “(c) EXCLUDING CERTAIN EVIDENCE.—No state-
9 ment made by the accused in the course of any such exam-
10 ination and no information received by any physician or
11 other person in the course thereof, whether such examina-
12 tion was made with or without the consent of the accused
13 or upon his motion or upon that of others, shall be admit-
14 ted in evidence against the accused on the issue of whether
15 he committed the act charged against him in any criminal
16 proceeding then or thereafter pending in any Federal
17 court.”.

18 (b) CLERICAL AMENDMENT.—The table of sections
19 for chapter 1 of title 18, United States Code, is amended
20 by adding at the end the following:

“28. Defense of self or others.

“29. Defense of property.

“30. Battered spouse defense.”.

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