

ASSEMBLY, No. 219

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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District 28 (Essex)

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**Assemblyman Conaway, Assemblywomen Lampitt, Mosquera, Pintor
Marin and McKnight**

SYNOPSIS

Creates self-defense justification for victims of domestic violence.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 3/1/2021)

1 **AN ACT** concerning self-defense justification for victims of
2 domestic violence and amending N.J.S.2C:3-4.

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4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

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7 1. N.J.S.2C:3-4 is amended to read as follows:

8 2C:3-4. Use of Force in Self-Protection. a. Use of force
9 justifiable for protection of the person. Subject to the provisions of
10 this section and of section 2C:3-9, the use of force upon or toward
11 another person is justifiable when the actor reasonably believes that
12 such force is immediately necessary for the purpose of protecting
13 himself against the use of unlawful force by such other person on
14 the present occasion.

15 b. Limitations on justifying necessity for use of force.

16 (1) The use of force is not justifiable under this section:

17 (a) To resist an arrest which the actor knows is being made by a
18 peace officer in the performance of his duties, although the arrest is
19 unlawful, unless the peace officer employs unlawful force to effect
20 such arrest; or

21 (b) To resist force used by the occupier or possessor of property
22 or by another person on his behalf, where the actor knows that the
23 person using the force is doing so under a claim of right to protect
24 the property, except that this limitation shall not apply if:

25 (i) The actor is a public officer acting in the performance of his
26 duties or a person lawfully assisting him therein or a person making
27 or assisting in a lawful arrest;

28 (ii) The actor has been unlawfully dispossessed of the property
29 and is making a reentry or recaption justified by section 2C:3-6; or

30 (iii) The actor reasonably believes that such force is necessary to
31 protect himself against death or serious bodily harm.

32 (2) The use of deadly force is not justifiable under this section
33 unless the actor reasonably believes that such force is necessary to
34 protect himself against death or serious bodily harm; nor is it
35 justifiable if:

36 (a) The actor, with the purpose of causing death or serious
37 bodily harm, provoked the use of force against himself in the same
38 encounter; or

39 (b) The actor knows that he can avoid the necessity of using
40 such force with complete safety by retreating or by surrendering
41 possession of a thing to a person asserting a claim of right thereto or
42 by complying with a demand that he abstain from any action which
43 he has no duty to take, except that:

44 (i) The actor is not obliged to retreat from his dwelling, unless
45 he was the initial aggressor; and

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (ii) A public officer justified in using force in the performance
2 of his duties or a person justified in using force in his assistance or
3 a person justified in using force in making an arrest or preventing
4 an escape is not obliged to desist from efforts to perform such duty,
5 effect such arrest or prevent such escape because of resistance or
6 threatened resistance by or on behalf of the person against whom
7 such action is directed.

8 (3) Except as required by paragraphs (1) and (2) of this
9 subsection, a person employing protective force may estimate the
10 necessity of using force when the force is used, without retreating,
11 surrendering possession, doing any other act which he has no legal
12 duty to do or abstaining from any lawful action.

13 c. (1) Notwithstanding the provisions of N.J.S.2C:3-5,
14 N.J.S.2C:3-9, or this section, the use of force or deadly force upon
15 or toward an intruder who is unlawfully in a dwelling is justifiable
16 when the actor reasonably believes that the force is immediately
17 necessary for the purpose of protecting himself or other persons in
18 the dwelling against the use of unlawful force by the intruder on the
19 present occasion.

20 (2) A reasonable belief exists when the actor, to protect himself
21 or a third person, was in his own dwelling at the time of the offense
22 or was privileged to be thereon and the encounter between the actor
23 and intruder was sudden and unexpected, compelling the actor to
24 act instantly and:

25 (a) The actor reasonably believed that the intruder would inflict
26 personal injury upon the actor or others in the dwelling; or

27 (b) The actor demanded that the intruder disarm, surrender or
28 withdraw, and the intruder refused to do so.

29 (3) An actor employing protective force may estimate the
30 necessity of using force when the force is used, without retreating,
31 surrendering possession, withdrawing or doing any other act which
32 he has no legal duty to do or abstaining from any lawful action.

33 d. In a prosecution where the use of force at issue was directed
34 by an actor protected under a temporary or permanent restraining
35 order issued pursuant to the provisions of the "Prevention of
36 Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et
37 al.) upon or toward a person who was subject to that restraining
38 order, evidence of the existence of the restraining order, the
39 circumstances leading to the issuance of the order, any conduct
40 constituting a violation of the order, including a prior violation, and
41 any prior acts constituting domestic violence, as defined in
42 subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19),
43 involving the actor and the person against whom force was directed,
44 is admissible and shall be relevant to whether the actor on this
45 occasion reasonably believed that the force used was immediately
46 necessary for the purpose of protecting himself against the use of
47 unlawful force.

48 (cf: P.L.1999, c.73, s.1)

1 2. This act shall take effect immediately.

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STATEMENT

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6 This bill would create a self-defense justification for victims of
7 domestic violence. The bill would make evidence surrounding a
8 domestic violence restraining order admissible and relevant to a
9 determination whether the use of force was justifiable where the use
10 of force at issue was directed by an actor protected under a
11 domestic violence restraining order upon or toward the person who
12 was subject to that restraining order. Under the bill, evidence of the
13 existence of a temporary or permanent restraining order, the
14 circumstances leading to the issuance of the order, any conduct
15 constituting a violation of the order, including a prior violation, and
16 any prior acts constituting domestic violence, as defined in
17 subsection a. of N.J.S.2C:25-19, involving the actor and the person
18 against whom force was directed, would be admissible and would
19 be relevant to whether the actor on this occasion reasonably
20 believed that the force used was immediately necessary for the
21 purpose of protecting the actor against the use of unlawful force.