

ASSEMBLY, No. 1822

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman ERIK PETERSON

District 23 (Hunterdon, Somerset and Warren)

SYNOPSIS

Authorizes use of force against intruder in a dwelling under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning the protection of persons and property and
2 amending N.J.S.2C:3-4 and N.J.S.2C:3-6.

3

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

6

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** N.J.S.2C:3-9, the use of force
11 upon or toward another person is justifiable when the actor
12 reasonably believes that such force is immediately necessary for the
13 purpose of protecting himself against the use of unlawful force by
14 such other person on 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**
30 N.J.S.2C:3-9; or

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

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

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

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

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

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

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

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

22 (2) A reasonable belief exists when the actor, to protect
23 **【himself】** the actor or a third person, was in **【his】** the actor's own
24 dwelling at the time of the offense or was privileged to be
25 **【thereon】** there and **【the encounter between the actor and intruder**
26 **was sudden and unexpected, compelling the actor to act instantly**
27 **and】**:

28 (a) The actor reasonably believed that the intruder would inflict
29 personal injury upon the actor or others in the dwelling**【; or】** .

30 (b) **【The actor demanded that the intruder disarm, surrender or**
31 **withdraw, and the intruder refused to do so.】** (Deleted by
32 amendment, P.L. , c.) (pending before the Legislature as this bill)

33 (3) An actor employing protective force in accordance with this
34 subsection **【may estimate the necessity of using force when the**
35 **force is used, without retreating, surrendering possession,**
36 **withdrawing or doing any other act which he has no legal duty to do**
37 **or abstaining from any lawful action】** shall have no duty to retreat
38 prior to using force.

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

40
41 2. N.J.S.2C:3-6 is amended to read as follows:

42 2C:3-6. Use of Force in Defense of Premises or Personal
43 Property. a. Use of force in defense of premises. Subject to the
44 provisions of this section and **【of section 2C:3-9】** N.J.S.2C:3-9, the
45 use of force upon or toward the person of another is justifiable
46 when:

- 1 (1) the actor is in the actor's dwelling and uses force against a
2 person who unlawfully enters or attempts to enter the actor's
3 dwelling; or
- 4 (2) the actor is in possession or control of premises or is
5 licensed or privileged to be thereon and **【he】** reasonably believes
6 **【such】** the use of force is necessary to prevent or terminate what
7 **【he】** the actor reasonably believes to be the commission or
8 attempted commission of a criminal trespass by **【such other】**
9 another person in or upon such premises.
- 10 b. Limitations on justifiable use of force in defense of
11 premises.
- 12 (1) Request to desist. The use of force is justifiable under
13 paragraph (2) of subsection a. of this section only if the actor first
14 requests the person against whom **【such】** force is used to desist
15 from his interference with the property, unless the actor reasonably
16 believes that:
- 17 (a) **【Such】** The request would be useless;
- 18 (b) It would be dangerous to himself or another person to make
19 the request; or
- 20 (c) Substantial harm will be done to the physical condition of
21 the property which is sought to be protected before the request can
22 effectively be made.
- 23 (2) Exclusion of trespasser. The use of force is not justifiable
24 under paragraph (2) of subsection a. of this section if the actor
25 knows that the exclusion of the trespasser will expose him to
26 substantial danger of serious bodily harm.
- 27 (3) Use of deadly force. The use of deadly force is not
28 justifiable under paragraph (2) of subsection a. of this section unless
29 the actor reasonably believes that:
- 30 (a) **【The person against whom the force is used is attempting to**
31 dispossess him of his dwelling otherwise than under a claim of right
32 to its possession; or **】** (Deleted by amendment, P.L. , c.) (pending
33 before the Legislature as this bill)
- 34 (b) The person against whom the force is used is attempting to
35 commit or consummate arson, burglary, robbery, or other criminal
36 theft or property destruction; except that
- 37 (c) Deadly force does not become justifiable under
38 **【subparagraphs (a) and】** subparagraph (b) of this subsection unless
39 the actor reasonably believes that:
- 40 (i) The person against whom it is employed has employed or
41 threatened deadly force against or in the presence of the actor; or
- 42 (ii) The use of force other than deadly force to terminate or
43 prevent the commission or the consummation of the crime would
44 expose the actor or another in his presence to substantial danger of
45 bodily harm.

1 (4) Use of deadly force in a dwelling. The use of deadly force is
2 not justifiable under paragraph (1) of subsection a. of this section
3 unless:

4 (a) The person against whom the force is used is unlawfully in
5 the dwelling;

6 (b) The actor was in [his] the actor's own dwelling at the time
7 of the offense or was privileged to be there; and

8 (c) the actor reasonably believes that the force is necessary for
9 the purpose of protecting the actor or other persons in the dwelling
10 against the use of unlawful force by the intruder.

11 An actor who uses deadly force in accordance with this
12 paragraph shall not be required to retreat prior to using deadly
13 force.

14 An actor within a dwelling shall be presumed to have a
15 reasonable belief in the existence of the danger. The State must
16 rebut this presumption by proof beyond a reasonable doubt.

17 c. Use of force in defense of personal property. Subject to the
18 provisions of subsection d. of this section and of **[section 2C:3-9]**
19 N.J.S.2C:3-9, the use of force upon or toward the person of another
20 is justifiable when the actor reasonably believes it necessary to
21 prevent what he reasonably believes to be an attempt by such other
22 person to commit theft, criminal mischief or other criminal
23 interference with personal property in his possession or in the
24 possession of another for whose protection he acts.

25 d. Limitations on justifiable use of force in defense of personal
26 property.

27 (1) Request to desist and exclusion of trespasser. The
28 limitations of paragraphs (1) and (2) of subsection b. [(1) and (2)]
29 of this section apply to subsection c. of this section.

30 (2) Use of deadly force. The use of deadly force in defense of
31 personal property is not justified unless justified under another
32 provision of this chapter.

33
34 3. This act shall take effect immediately.

37 STATEMENT

38
39 This bill authorizes a person to use force, including deadly force,
40 against an intruder who is unlawfully in a dwelling, and provides
41 that the person does not have a duty to retreat prior to using force
42 under certain circumstances.

43 Under current law, a person is permitted to use force against
44 another if that person reasonably believes his or her life is in
45 danger, or that an individual intends to inflict serious bodily harm.
46 However, current law imposes a "duty to retreat," which requires a
47 person to refrain from using force if the person to is able to retreat
48 and escape harm.

1 Under current law, the use of force against an intruder in defense
2 of the person's premises or personal property is justifiable only if
3 the person using force first requests the intruder to stop interfering
4 with the property, unless the person reasonably believes that: (1) the
5 request would be useless; (2) it would be dangerous to himself or
6 herself or another person to make the request; or (3) substantial
7 harm will be done to the physical condition of the property which is
8 sought to be protected before the request can effectively be made.
9 A person may not, however, use force to defend his or her premises
10 or personal property if the person knows that the exclusion of the
11 intruder will expose himself or herself to substantial danger of
12 serious bodily harm. The burden is on the State to prove beyond a
13 reasonable doubt that the use of force by a person was not justified.

14 Under the bill, the use of force or deadly force against an
15 intruder who is unlawfully in a dwelling is justifiable when the
16 person reasonably believes that the force is immediately necessary
17 for the purpose of protecting himself or another person in the
18 dwelling against the use of unlawful force by the intruder. A
19 reasonable belief exists if the person using force is in his own
20 dwelling at the time the force was used, or was privileged to be
21 there, and reasonably believes that the intruder would inflict
22 personal injury on the person using force or others in the dwelling.
23 A person who uses protective force in accordance with the
24 provisions of the bill does not have a duty to retreat prior to using
25 force.