

SENATE, No. 3775

STATE OF NEW JERSEY
219th LEGISLATURE

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Sponsored by:
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SYNOPSIS

The “New Jersey Right to Home Defense Law.”

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning the justifiable use of force in defending a
2 dwelling, home or residence, amending N.J.S.2C:3-4 and
3 N.J.S.2C:3-6, and supplementing chapter 3 of Title 2C of the
4 New Jersey Statutes.

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

8
9 1. (New section) This act shall be known and may be cited as
10 the "New Jersey Right to Home Defense Law."

11
12 2. (New section) The Legislature finds and declares that:

13 a. Law-abiding people should have the right to protect
14 themselves, their families and others from intruders and attackers
15 without fear of prosecution or civil action for acting in defense of
16 their own well being and the well being of others in their own
17 homes and residences.

18 b. The "castle doctrine" is a long-standing American legal
19 concept arising from English common law that provides that one's
20 abode is a special area in which one enjoys certain protections and
21 immunities, that one is not obligated to retreat before defending
22 oneself against attack, and that one may do so without fear of
23 prosecution.

24 c. Article I of the New Jersey Constitution guarantees the
25 citizens of this State the rights "of enjoying and defending life and
26 liberty, of acquiring, possessing, and protecting property, and of
27 pursuing and obtaining safety and happiness."

28 d. All citizens and residents of this State have a right to expect
29 to be unmolested and safe within their homes and residences.

30 e. No person should be required, as a point of law, to surrender
31 their personal safety or well being to the unlawful actions of a
32 criminal, nor to needlessly retreat in the face of intrusion or attack
33 in their home or residence.

34 f. It is, therefore, altogether fitting and proper, and within the
35 public interest, to ensure that law-abiding people are justified in
36 protecting themselves, their families and others from intruders and
37 attackers in their homes and residences, and that they may do so
38 without fear of prosecution or civil action.

39

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

41 2C:3-4. Use of Force in Self-Protection. a. Use of force
42 justifiable for protection of the person. Subject to the provisions of
43 this section and of section 2C:3-9, the use of force upon or toward
44 another person is justifiable when the actor reasonably believes that
45 such force is immediately necessary for the purpose of protecting

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 himself against the use of unlawful force by such other person on
2 the present occasion.

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

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

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

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

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

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

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

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

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

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

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

34 (ii) A public officer justified in using force in the performance
35 of his duties or a person justified in using force in his assistance or
36 a person justified in using force in making an arrest or preventing
37 an escape is not obliged to desist from efforts to perform such duty,
38 effect such arrest or prevent such escape because of resistance or
39 threatened resistance by or on behalf of the person against whom
40 such action is directed.

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

46 c. **[(1)** Notwithstanding the provisions of N.J.S.2C:3-5,
47 N.J.S.2C:3-9, or this section, the use of force or deadly force upon
48 or toward an intruder who is unlawfully in a dwelling is justifiable

1 when the actor reasonably believes that the force is immediately
2 necessary for the purpose of protecting himself or other persons in
3 the dwelling against the use of unlawful force by the intruder on the
4 present occasion.

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

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

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

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

18 (Deleted by amendment, P.L. , c.) (pending before the
19 Legislature as this bill).

20 d. Notwithstanding the provisions of N.J.S.2C:3-5, N.J.S.2C:3-
21 9, or this section, the use of force or deadly force upon or toward an
22 intruder is justified when the actor reasonably fears imminent peril
23 of death or serious bodily harm to himself or another as a result of
24 that intrusion into his home or residence.

25 For the purposes of this subsection, a person is presumed to have
26 a reasonable fear of imminent peril of death or serious bodily harm
27 to himself or another and, therefore, is justified in using force when
28 the person against whom that force is used (1) is in the process of
29 unlawfully and forcefully entering the person's home or residence;
30 (2) has unlawfully and forcibly entered the person's home or
31 residence; or (3) has unlawfully removed, or is attempting to
32 unlawfully remove another, against that individual's will, from a
33 person's home or residence. A person also shall be presumed to
34 have a reasonable fear of imminent peril of death or serious bodily
35 harm to himself or another and, therefore, be justified in using force
36 when the actor knows or reasonably believes that an unlawful and
37 forcible entry is occurring or an intruder is presently in the actor's
38 home or residence, or when the actor knows or reasonably believes
39 that an unlawful and forcible act is occurring or has occurred.

40 A person presumed to have a reasonable fear of imminent peril
41 of death or serious bodily harm to himself or another in his home or
42 residence has no duty to retreat and is justified in using force,
43 including deadly force, if he reasonably believes it is necessary to
44 do so to prevent death or serious bodily harm to himself or another.
45 (cf: P.L.1999, c.73, s.1)

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

2 2C:3-6. Use of Force in Defense of Premises or Personal
3 Property.

4 a. Use of force in defense of premises. Subject to the
5 provisions of this section and of section 2C:3-9, the use of force
6 upon or toward the person of another is justifiable when the actor is
7 in possession or control of premises or is licensed or privileged to
8 be thereon and he reasonably believes such force necessary to
9 prevent or terminate what he reasonably believes to be the
10 commission or attempted commission of a criminal trespass by such
11 other person in or upon such premises: provided, however, a person
12 who unlawfully and by force enters or attempts to enter a person's
13 home or residence is presumed to do so with the intent to commit an
14 unlawful act involving force or violence and the use of force upon
15 or toward that person is justifiable.

16 b. Limitations on justifiable use of force in defense of
17 premises.

18 (1) Request to desist. **【The】** Except in those instances where,
19 pursuant to subsection a. of this section, the use of force is
20 justifiable upon or toward a person who unlawfully and by force
21 enters or attempts to enter a person's home or residence and is
22 presumed to do so with the intent to commit an unlawful act
23 involving force or violence, the use of force is justifiable under this
24 section only if the actor first requests the person against whom such
25 force is used to desist from his interference with the property,
26 unless the actor reasonably believes that:

27 (a) Such request would be useless;

28 (b) It would be dangerous to himself or another person to make
29 the request; or

30 (c) Substantial harm will be done to the physical condition of
31 the property which is sought to be protected before the request can
32 effectively be made.

33 (2) Exclusion of trespasser. The use of force is not justifiable
34 under this section if the actor knows that the exclusion of the
35 trespasser will expose him to substantial danger of serious bodily
36 harm.

37 (3) Use of deadly force. The use of deadly force is not
38 justifiable under subsection a. of this section unless the actor
39 reasonably believes that:

40 (a) The person against whom the force is used is attempting to
41 dispossess him of his dwelling otherwise than under a claim of right
42 to its possession; or

43 (b) The person against whom the force is used is attempting to
44 commit or consummate arson, burglary, robbery or other criminal
45 theft or property destruction; except that

46 (c) Deadly force does not become justifiable under
47 subparagraphs (a) and (b) of this subsection unless the actor
48 reasonably believes that:

- 1 (i) The person against whom it is employed has employed or
2 threatened deadly force against or in the presence of the actor; or
3 (ii) The use of force other than deadly force to terminate or
4 prevent the commission or the consummation of the crime would
5 expose the actor or another in his presence to substantial danger of
6 bodily harm. An actor within a dwelling shall be presumed to have
7 a reasonable belief in the existence of the danger. The State must
8 rebut this presumption by proof beyond a reasonable doubt; or
9 (iii) The actor is in imminent peril of death or serious bodily
10 harm to himself and, pursuant to N.J.S.2C:3-4, is justified in using
11 force, including deadly force. The State must rebut this
12 presumption by proof beyond a reasonable doubt.
- 13 c. Use of force in defense of personal property. Subject to the
14 provisions of subsection d. of this section and of section 2C:3-9, the
15 use of force upon or toward the person of another is justifiable
16 when the actor reasonably believes it necessary to prevent what he
17 reasonably believes to be an attempt by such other person to
18 commit theft, criminal mischief or other criminal interference with
19 personal property in his possession or in the possession of another
20 for whose protection he acts.
- 21 d. Limitations on justifiable use of force in defense of personal
22 property.
- 23 (1) Request to desist and exclusion of trespasser. The
24 limitations of subsection b. (1) and (2) of this section apply to
25 subsection c. of this section.
- 26 (2) Use of deadly force. The use of deadly force in defense of
27 personal property is not justified unless justified under another
28 provision of this chapter.
29 (cf: P.L.1987, c.120, s.2)
30
- 31 5. (New section) a. A person who is justified in using force
32 under this chapter is immune from criminal prosecution and civil
33 action for the use of that force.
- 34 As used in this subsection, "criminal prosecution" means
35 arresting, detaining in custody, and charging or prosecuting the
36 actor; provided, however, a law enforcement agency may use
37 standard procedures for investigating the use of that force and, if it
38 determines that there is probable cause that the force so used was
39 unlawful, arrest, detain, and charge or prosecute, as appropriate.
- 40 b. A court of competent jurisdiction shall award reasonable
41 attorney's fees, court costs, compensation for loss of income and all
42 expenses incurred by the defendant in defense of any civil action
43 brought by a plaintiff if the court finds that the defendant is immune
44 from prosecution pursuant to subsection a. of this section.
45
- 46 6. This act shall take effect immediately.

STATEMENT

This bill, the "New Jersey Right to Home Defense Law," authorizes a person to use force, including deadly force, in those instances where the person reasonably fears imminent peril of death or serious bodily harm from an intruder or attacker in his home or residence.

The bill sets forth the circumstances under which a person is presumed to have a reasonable fear of imminent peril of death or serious bodily harm. Those circumstance include instances where a individual: (1) is in the process of unlawfully and forcefully entering a home or residence; (2) has unlawfully and forcibly entered a home or residence; or (3) has removed, or is attempting to unlawfully remove another, against that person's will, from a home or residence; or (4) when the actor knows or reasonably believes that an unlawful and forcible entry is occurring or has occurred; or (5) when the actor knows or reasonably believes that an unlawful and forcible act is occurring or has occurred.

The bill clarifies that a person presumed to have a reasonable fear of imminent peril of death or serious bodily harm to himself or another in his home or residence has no duty to retreat and is justified in using force, including deadly force, if he reasonably believes it is necessary to do so to prevent death or serious bodily harm to himself or another.

Finally, the bill provides immunity, both criminal and civil, for any person who is justified in using force. Under the bill, the court is authorized to award reasonable attorney's fees, court costs, compensation for loss of income and all expenses incurred by a defendant who is wrongly subject to a civil action.