

Bill A134

Session 2006 - 2007



ASSEMBLY, No. 134
STATE OF NEW JERSEY
212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION





Sponsored by:
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SYNOPSIS

The "New Jersey Self-Defense Law."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel







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

1. This act shall be known and may be cited as the "New Jersey Self-Defense Law."
2. The Legislature finds and declares that:
 - a. It is proper for law-abiding people to protect themselves, their families and others from intruders and attackers without fear of prosecution or civil action for acting in defense of their own well being and the well being of others.
 - b. The "Castle Doctrine" is a long-standing American legal concept arising from English Common Law that provides that one's abode is a special area in which one enjoys certain protections and immunities, that one is not obligated to retreat before defending oneself against attack, and that one may do so without fear of prosecution.
 - c. Article I of the New Jersey Constitution guarantees the citizens of this State the rights "of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness."
 - d. The Second Amendment to the United States Constitution affords the people of this nation the right to keep and bear arms.
 - e. All who reside in and all who visit this State have a right to expect to be unmolested and safe within their homes, residences and vehicles.
 - f. No person should be required, as a point of law, to surrender their personal safety or well being to the unlawful actions of a criminal, nor to needlessly retreat in the face of intrusion or attack.
 - g. It is, therefore, altogether fitting and proper, and within the public interest, to ensure that law-abiding people are justified in protecting themselves, their families and others from intruders and attackers, and that they may do so without fear of prosecution or civil action.
3. N.J.S.2C:3-4 is amended to read as follows:

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

 - b. Limitations on justifying necessity for use of force.
 - (1) The use of force is not justifiable under this section:
 - (a) To resist an arrest which the actor knows is being made by a peace officer in the performance of his duties, although the arrest is unlawful, unless the peace officer employs unlawful force to effect such arrest; or
 - (b) To resist force used by the occupier or possessor of property or by another person on his behalf, where the actor knows that the person using the force is doing so under a claim of right to protect the property, except that this limitation shall not apply if:
 - (i) The actor is a public officer acting in the performance of his duties or a person lawfully assisting him therein or a person making or assisting in a lawful arrest;
 - (ii) The actor has been unlawfully dispossessed of the property and is making a reentry or recaption justified by section 2C:3-6; or
 - (iii) The actor reasonably believes that such force is necessary to protect himself against death or serious bodily harm.
 - (2) The use of deadly force is not justifiable under this section unless the actor reasonably believes that such force is necessary to protect himself against death or serious bodily harm; nor is it justifiable if:
 - (a) The actor, with the purpose of causing death or serious bodily harm, provoked the use of force against himself in the same encounter; or

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

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

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

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

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

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

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

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

(3) An actor employing protective force may estimate the necessity of using force when the force is used, without retreating, surrendering possession, withdrawing or doing any other act which he has no legal duty to do or abstaining from any lawful action.] (Deleted by amendment, P.L. , c.)(now pending before the Legislature as this bill).

d. Notwithstanding the provisions of N.J.S.2C:3-5, N.J.S.2C:3-9, or this section, the use of force or deadly force upon or toward an intruder is justified when the actor reasonably fears imminent peril of death or serious bodily harm to himself or another.

For the purposes of this subsection, a person is presumed to have a reasonable fear of imminent peril of death or serious bodily harm to himself or another and, therefore, is justified in using force when the person against whom that force is used (1) is in the process of unlawfully and forcefully entering a dwelling, residence or occupied vehicle; (2) has unlawfully and forcibly entered at dwelling, residence or occupied vehicle; or (3) has removed, or is attempting to remove, another against that person's will from a dwelling, residence or occupied vehicle. A person also shall be presumed to have a reasonable fear of imminent peril of death or serious bodily harm to himself or another and, therefore, be justified in using force when the actor knows or reasonably believes that an unlawful and forcible entry is occurring or has occurred, or when the actor knows or reasonably believes that an unlawful and forcible act is occurring or has occurred.

A person presumed to have a reasonable fear of imminent peril of death or serious bodily harm to himself in a dwelling, residence or occupied vehicle 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.

As used in this subsection:

"Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, that has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

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

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

2C:3-6. Use of force in defense of premises or personal property

Use of Force in Defense of Premises or Personal Property.

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

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

(1) Request to desist. [The] Except in those instances where, pursuant to subsection a. of this section, the use of force is justifiable upon or toward a person who unlawfully and by force enters or attempts to enter a person's dwelling, residence or occupied vehicle and is presumed to do so with the intent to commit an unlawful act involving force or violence, the use of force is justifiable under this section only if the actor first requests the person against whom such force is used to desist from his interference with the property, unless the actor reasonably believes that:

(a) Such request would be useless;

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

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

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

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

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

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

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

(i) The person against whom it is employed has employed or threatened deadly force against or in the presence of the actor; or

(ii) The use of force other than deadly force to terminate or prevent the commission or the consummation of the crime would expose the actor or another in his presence to substantial danger of bodily harm. An actor within a dwelling shall be presumed to have a reasonable belief in the existence of the danger. The State must rebut this presumption by proof beyond a reasonable doubt; or

(iii) The actor is in imminent peril of death or serious bodily harm to himself and, pursuant to N.J.S.2C:3-4, is justified in using force, including deadly force. The State must rebut this presumption by proof beyond a reasonable doubt.

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

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

(1) Request to desist and exclusion of trespasser. The limitations of subsection b. (1) and (2) of this section apply to subsection c. of this section.

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

(cf: P.L.1987, c.120, s.2)

5. (New section) In addition to the justifications for the use of force otherwise authorized under this chapter, a person, not engaged in an unlawful activity, who is attacked in any place where he has a right to be has no duty to retreat and has the right to stand his ground and meet force with 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 or to prevent a crime of violence.

6. (New section) a. A person who is justified in using force under this chapter is immune from criminal prosecution and civil action for the use of that force.

As used in this subsection, "criminal prosecution" means arresting, detaining in custody, and charging or prosecuting the actor; provided, however, a law enforcement agency may use standard procedures for investigating the use of that force and, if it determines that there is probable cause that the force so used was unlawful, arrest, detain, and charge or prosecute, as appropriate.

b. A court of competent jurisdiction shall award reasonable attorney's fees, court costs, compensation for loss of income and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution pursuant to subsection a. of this section.

7. This act shall take effect immediately.

This bill, the "New Jersey Self-Defense Law," authorizes a person to use force, including deadly force, against an intruder or attacker in a dwelling, residence or occupied vehicle in those instances where the actor reasonably fears imminent peril of death or serious bodily harm.

The bill sets forth the circumstances under which a person is presumed to have a reasonable fear of imminent period of death or serious bodily harm. Those circumstance include instances where a person: (1) is in the process of unlawfully and forcefully entering a dwelling, residence or occupied vehicle; (2) has unlawfully and forcibly entered a dwelling, residence or occupied vehicle; or (3) has removed, or is attempting to remove, another against that person's will from a dwelling, residence or occupied vehicle; 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 has no duty to retreat before justifiably using force in instances where that person is attacked, reasonably fears imminent peril of death or serious bodily harm to himself or to prevent death or serious bodily harm to 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.

