

ASSEMBLY, No. 159

STATE OF NEW JERSEY

213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

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SYNOPSIS

The "New Jersey Self-Defense Law."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 5/6/2008)

A159 MERKT, MCHOSE

2

1 AN ACT concerning the protection of persons and property,
2 amending N.J.S.2C:3-4 and N.J.S.2C:3-6, and supplementing
3 chapter 3 of Title 2C of the New Jersey Statutes.

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

7
8 1. This act shall be known and may be cited as the "New Jersey
9 Self-Defense Law."

10
11 2. The Legislature finds and declares that:

12 a. It is proper for law-abiding people to protect themselves, their
13 families and others from intruders and attackers without fear of
14 prosecution or civil action for acting in defense of their own well
15 being and the well being of others.

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

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

26 d. The Second Amendment to the United States Constitution
27 affords the people of this nation the right to keep and bear arms.

28 e. All who reside in and all who visit this State have a right to
29 expect to be unmolested and safe within their homes, residences and
30 vehicles.

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

34 g. 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, and that they may do so without fear of prosecution or
38 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.)(now 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.

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

39 A person presumed to have a reasonable fear of imminent peril
40 of death or serious bodily harm to himself in a dwelling, residence
41 or occupied vehicle has no duty to retreat and is justified in using
42 force, including deadly force, if he reasonably believes it is
43 necessary to do so to prevent death or serious bodily harm to
44 himself or another.

45 As used in this subsection:

46 "Dwelling" means a building or conveyance of any kind,
47 including any attached porch, whether the building or conveyance is
48 temporary or permanent, mobile or immobile, that has a roof over

1 it, including a tent, and is designed to be occupied by people
2 lodging therein at night.

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

4

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

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

7 Use of Force in Defense of Premises or Personal Property.

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

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

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

31 (a) Such request would be useless;

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

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

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

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

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

47 (b) The person against whom the force is used is attempting to
48 commit or consummate arson, burglary, robbery or other criminal

1 theft or property destruction; except that

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

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

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

13 (iii) The actor is in imminent peril of death or serious bodily
14 harm to himself and, pursuant to N.J.S.2C:3-4, is justified in using
15 force, including deadly force. The State must rebut this
16 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, the
19 use of force upon or toward the person of another is justifiable
20 when the actor reasonably believes it necessary to prevent what he
21 reasonably believes to be an attempt by such other person to
22 commit theft, criminal mischief or other criminal interference with
23 personal property in his possession or in the possession of another
24 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 limitations
28 of subsection b. (1) and (2) of this section apply to subsection c. of
29 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 (cf: P.L.1987, c.120, s.2)

34

35 5. (New section) In addition to the justifications for the use of
36 force otherwise authorized under this chapter, a person, not engaged
37 in an unlawful activity, who is attacked in any place where he has a
38 right to be has no duty to retreat and has the right to stand his
39 ground and meet force with force, including deadly force, if he
40 reasonably believes it is necessary to do so to prevent death or
41 serious bodily harm to himself or another or to prevent a crime of
42 violence.

43

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

47 As used in this subsection, "criminal prosecution" means
48 arresting, detaining in custody, and charging or prosecuting the

1 actor; provided, however, a law enforcement agency may use
2 standard procedures for investigating the use of that force and, if it
3 determines that there is probable cause that the force so used was
4 unlawful, arrest, detain, and charge or prosecute, as appropriate.

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

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11 7. This act shall take effect immediately.

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13

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STATEMENT

15

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

21 The bill sets forth the circumstances under which a person is
22 presumed to have a reasonable fear of imminent period of death or
23 serious bodily harm. Those circumstance include instances where a
24 person: (1) is in the process of unlawfully and forcefully entering a
25 dwelling, residence or occupied vehicle; (2) has unlawfully and
26 forcibly entered a dwelling, residence or occupied vehicle; or (3)
27 has removed, or is attempting to remove, another against that
28 person's will from a dwelling, residence or occupied vehicle; or (4)
29 when the actor knows or reasonably believes that an unlawful and
30 forcible entry is occurring or has occurred; or (5) when the actor
31 knows or reasonably believes that an unlawful and forcible act is
32 occurring or has occurred.

33 The bill clarifies that a person has no duty to retreat before
34 justifiably using force in instances where that person is attacked,
35 reasonably fears imminent peril of death or serious bodily harm to
36 himself or to prevent death or serious bodily harm to another.

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