

SENATE, No. 2245

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 17, 1997

By Senators LIPMAN, CODEY, Adler, Lesniak and  
McGreevey

1 AN ACT concerning the duty to retreat regarding the use of deadly  
2 force 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 the  
14 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 the  
24 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 or  
27 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

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

**Matter underlined thus is new matter.**

1 protect himself against death or serious bodily harm; nor is it  
2 justifiable if:

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

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

11 (i) The actor is not obliged to retreat from his dwelling, unless  
12 he was the initial aggressor or is assailed in his dwelling by another  
13 person whose dwelling the actor knows it to be except that the actor  
14 who becomes the target of a unilateral unprovoked attack by a  
15 cohabitant spouse or cohabitant household member with whom the  
16 actor has a history of domestic violence is not obliged to retreat in the  
17 shared dwelling ; and

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

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

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

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

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

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

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

5 (cf: P.L.1987, c.120, s.1)

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7 2. This act shall take effect immediately.

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10 STATEMENT

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12 This bill amends N.J.S.2C:3-4 regarding the justifiable use of deadly  
13 force to provide that a person who has been a victim of domestic  
14 violence who is attacked by a cohabitant spouse or cohabitant  
15 household member has no duty to retreat in the shared dwelling.

16 This bill is a response to the New Jersey Supreme Court's opinion  
17 in State v. Gartland (A-80, decided June 19,1997). The court noted  
18 in that decision that New Jersey is among the minority of jurisdictions  
19 that impose a duty to retreat on a woman attacked by her cohabitant  
20 spouse. This bill includes a cohabitant household member in addition  
21 to cohabitant spouse since the definition of "victim of domestic  
22 violence" in N.J.S.A.2C:25-19 includes household members.

23 This bill is not intended to change the New Jersey retreat doctrine  
24 regarding the use of deadly force with respect to others who occupy  
25 the same dwellings as co-owners, co-tenants and co-occupants. The  
26 bill is intended to address situations in which there has been a history  
27 of domestic violence between spouses or other household members.

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32 Changes retreat doctrine regarding use of deadly force with respect to  
33 victims of domestic violence assailed by cohabitant spouses or  
34 cohabitant household members in a shared dwelling.