

SENATE, No. 2266

STATE OF NEW JERSEY

INTRODUCED JUNE 26, 1997

By Senators KOSCO and SINAGRA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (3) An actor employing protective force may estimate the necessity  
45 of using force when the force is used, without retreating, surrendering  
46 possession, withdrawing or doing any other act which he has no legal

1 duty to do or abstaining from any lawful action.  
2 (cf: P.L.1987, c.120, s.1)

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4 2. This act shall take effect immediately.

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#### STATEMENT

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

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

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

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