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HOUSE BILL 163

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

John A. Heaton

AN ACT

RELATING TO CRIMINAL LAW; PROVIDING FOR JUSTIFIABLE USE OF
DEFENSIVE FORCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-2-7 NMSA 1978 (being Laws 1963,
Chapter 303, Section 2-8) is amended to read:

"30-2-7. JUSTIFIABLE HOMICIDE OR USE OF FORCE BY
CITIZEN.--

A. Homicide or the use of force, including deadly
force, is justifiable when committed by any person in any of
the following cases:

[A.] (1) when committed in the necessary
defense of [his] life, [his] family or [his] property or in
necessarily defending against any unlawful action directed
against [himself, his wife] the person or the person's spouse

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1 or family;

2 [B.] (2) when committed in the lawful defense
3 of [himself] that person or of another and when there [is a]
4 are reasonable [~~ground~~] grounds to believe a design exists to
5 commit a felony or to do some great personal injury against
6 such person or another, and there is imminent danger that the
7 design will be accomplished; or

8 [C.] (3) when necessarily committed in
9 attempting, by lawful ways and means, to apprehend any person
10 for any felony committed in [his] the person's presence or in
11 lawfully suppressing any riot or in necessarily and lawfully
12 keeping and preserving the peace.

13 B. A person who uses defensive force, including
14 deadly force, shall be presumed to have reasonably feared
15 imminent death or great bodily harm, or the commission of a
16 felony upon the person or another or upon the person's dwelling
17 or immediate premises, or against a vehicle that the person was
18 occupying, if the person against whom defensive force was used
19 was in the process of unlawfully and forcibly entering, or had
20 unlawfully and forcibly entered, the dwelling or immediate
21 premises or occupied vehicle, or if that person had unlawfully
22 removed, or was attempting to unlawfully remove, another
23 against that person's will from that dwelling or immediate
24 premises or occupied vehicle, and the person who used defensive
25 force knew or had reason to believe that the forcible entry or

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1 unlawful and forcible act was occurring or had occurred. The
2 presumption in this subsection shall not apply if:

3 (1) the person against whom defensive force is
4 used has a right to be in or is a lawful resident or owner of
5 the dwelling or immediate premises or vehicle;

6 (2) the person using defensive force is
7 engaged in criminal activity; or

8 (3) the person against whom defensive force is
9 used is a law enforcement officer engaged in the performance of
10 official duties.

11 C. A person who is not the initial aggressor and is
12 not engaged in criminal activity shall have no duty to retreat
13 before using force under Subsection A of this section if the
14 person is in a place where the person has a right to be, and no
15 finder of fact shall be permitted to consider the person's
16 failure to retreat as evidence that the person's use of force
17 was unnecessary, excessive or unreasonable."

18 Section 2. Section 30-2-8 NMSA 1978 (being Laws 1963,
19 Chapter 303, Section 2-9) is amended to read:

20 "30-2-8. WHEN HOMICIDE OR USE OF FORCE IS EXCUSABLE OR
21 JUSTIFIABLE DEFENDANT TO BE ACQUITTED.--If a defendant's
22 conduct is in accordance with Section 30-2-7 NMSA 1978, it
23 shall constitute a defense to prosecution for any crime based
24 on that conduct. Whenever [~~any~~] a person is prosecuted for a
25 homicide or use of defensive force, including deadly force,

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1 and, upon [~~his~~] the person's trial, the killing [~~shall be~~] or
2 use of defensive force is found to have been excusable or
3 justifiable, the jury shall find [~~such~~] the person not guilty
4 and [~~he~~] the person shall be discharged."

5 Section 3. Section 31-23-1 NMSA 1978 (being Laws 1985,
6 Chapter 152, Section 1) is amended to read:

7 "31-23-1. CIVIL ACTION--CRIME--DAMAGES--IMMUNITY.--

8 A. No person shall be liable to a plaintiff in any
9 civil action for damages if by a preponderance of the evidence
10 the damages were incurred as a consequence of:

11 [~~A.-~~] (1) the commission, attempted commission
12 or flight subsequent to the commission of a crime by the
13 plaintiff; and

14 [~~B.-~~] (2) the use of force or deadly force by
15 the defendant [~~which~~] that is justified pursuant to common law
16 or the law of the state.

17 B. The court shall award reasonable attorney fees,
18 court costs, compensation for loss of income and all expenses
19 incurred by the defendant in defense of any civil action
20 brought by a plaintiff if the court finds that the defendant is
21 not liable as provided in Subsection A of this section."