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SENATE BILL 419

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

INTRODUCED BY  
Steve Komadina

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."