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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/23/2007

SPONSOR Robinson LAST UPDATED 1/23/2007 HB \_\_\_\_\_

SHORT TITLE Justifiable Use of Defensive Force SB 39

ANALYST Schuss

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates House Bill 163, Relates to Senate Bill 152

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Defender Department (PDD)  
 Administrative Office of the Courts (AOC)  
 Department of Public Safety (DPS)  
 Attorney General's Office (AG)

#### No Response Received

Administrative Office of the District Attorney

### SUMMARY

#### Synopsis of Bill

Senate Bill 39 amends Section 30-2-7, Section 30-2-8, and Section 31-23-1 NMSA 1978. The amendment to Section 30-2-7 NMSA 1978 is to expand upon the type of justifiable force allowable under prescribed circumstances to include the use of force, including deadly force. The bill provides that the person who uses defensive force, including deadly force, shall be presumed to have reasonably feared imminent death or great bodily harm, or the commission of a felony upon the person or another or upon the person's dwelling or immediate premises, or against a vehicle that the person was occupying. The bill requires that the person against whom defensive force was used:

- be in the process of unlawfully and forcibly entering; or

- had unlawfully and forcibly entered the dwelling or immediate premises or occupied vehicle; or
- had unlawfully removed or was attempting to unlawfully remove another against that person's will from that dwelling or immediate premises or occupied vehicle; and
- the person who used defensive force knew or had reason to believe that the forcible entry or unlawful and forcible act was occurring or had occurred.

Under the bill, the presumption shall not apply in the following circumstances:

- if the person against whom defensive force is used has a right to be in or is a lawful resident or owner of the dwelling or immediate premises or vehicle;
- the person using defensive force is engaged in criminal activity; or
- the person against whom defensive force is used is a law enforcement officer engaged in the performance of official duties.

Section 30-2-8 NMSA 1978 is amended to include the use of force, including deadly force as grounds for acquittal of the defendant when proven to be excusable or justifiable.

Section 31-23-1 NMSA 1978 is amended to provide for the awarding of reasonable attorney fees, costs, compensation for loss of income and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff, when the court finds the defendant not liable as provided in the amended Section 30-2-7 NMSA 1978.

## **FISCAL IMPLICATIONS**

The Administrative Office of the Courts believes that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to challenges to verdicts and awards, based on claims of self-defense or defense of others. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

The Public Defender Department states that passage of this bill might actually reduce their workload infinitesimally.

## **SIGNIFICANT ISSUES**

The Attorney General's Office notes that as to criminal prosecutions, this bill actually seems to codify existing case law on the subject of defense of self, family and habitation. Also, please note, that the use of deadly force is not permitted in preventing an ordinary theft or in attempting to recover stolen property. *State v. Johnson*, 1998 -NMCA- 019, 124 N.M. 647, 954 P.2d 79, *adopting Tennessee v. Garner*, 471 U.S. 1 (1984); and any use of deadly force must still be reasonable. *Downs v. Garay*, 106 N.M. 321, 742 P.2d 533 (Ct. App. 1987) Justification or excuse are already defenses to any civil action resulting from the use of force in self-defense, defense of others, or defense of habitation. The new feature here is the award of fees and costs to successful defendants in civil cases.

The Public Defender Department adds that this bill seems eminently sensible. New Mexico is a large state whose wide-open spaces often result in unavoidably long police response times. Carjackers and home invaders are generally violent. A person whose home is invaded or who is carjacked may not have any alternative but to use force to defend himself.

### **PERFORMANCE IMPLICATIONS**

The Administrative Office of the Courts notes that the courts are participating in performance-based budgeting. As a result of challenges to verdicts and awards, this bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type
- Clearance Rate

### **CONFLICT, DUPLICATION, RELATIONSHIP**

Duplicates House Bill 163, Conflicts with/Relates to Senate Bill 152

### **TECHNICAL ISSUES**

The Attorney General's Office states that in a sense, the new language to be added to 30-2-7 could be viewed as containing a rule of procedure, a rule of evidence and provisions that would require a particular jury instruction in any prosecution for the use of deadly force under the circumstances detailed here. The legislature should be mindful of the supreme court's decisions in *Ammerman v. Hubbard Broadcasting, Inc.*, 89 N.M. 307, 551 P.2d 1354 (1976), and *Albuquerque Rape Crisis Center v. Blackmer*, 2005 -NMSC- 032, 138 N.M. 398, 120 P.3d 820, which articulate the general rule that the legislature is precluded from enacting statutes that bear on the procedures used in the courts. Generally, rule-making authority, including promulgating the rules of evidence and jury instructions, is, reserved to the supreme court. The *Blackmer* decision, however, recognizes exceptions to that general rule. They also note that these new provisions will specifically apply to prosecutions for aggravated battery, aggravated assault or kindred offenses.

BS/csd