

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 701

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Candy Spence Ezzell

AN ACT

RELATING TO CRIMINAL LAW; PROVIDING FOR JUSTIFIABLE USE OF FORCE; PROVIDING NO DUTY TO RETREAT; PROVIDING FOR ATTORNEY FEES AND COSTS.

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

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 against ~~[himself, his wife]~~ the person or the person's spouse
2 or family;

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

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

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

.176707.1

underscored material = new
[bracketed material] = delete

1 force knew or had reason to believe that the forcible entry or
2 unlawful and forcible act was occurring or had occurred. The
3 presumption in this subsection shall not apply if:

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

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

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

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

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

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

.176707.1

underscored material = new
[bracketed material] = delete

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

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

8 "31-23-1. CIVIL ACTION--CRIME--DAMAGES--IMMUNITY.--

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

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

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

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

23 Section 4. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2009.