

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/16/09

SPONSOR Ezzell LAST UPDATED _____ HB 701

SHORT TITLE Justifiable Use of Force & Attorney Fees SB _____

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Bernalillo County Metropolitan Court (BCMC)
 Public Defender (PD)
 Administrative Office of the Courts (AOC)
 New Mexico Sentencing Commission (NMSC)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

House Bill 701 amends NMSA 1978, § 30-2-7 to create a presumption of the justifiable use of defensive force against a person who was in the process of or had unlawfully and forcibly entered the dwelling, immediate premises, or occupied vehicle of the person using the defensive force, provided that the person using the defensive force knew or had reason to believe that the forcible entry or unlawful or forcible act was occurring or had occurred. Under the proposed amendment to § 30-2-7, presumption of justifiable defensive force would not apply if: (1) the person against whom defensive force is used had a right to be in or is the lawful owner of the dwelling, premises or vehicle; (2) the person using the defensive force is engaged in criminal activity; or (3) the person against whom defensive force is used is a law enforcement officer engaged in the performance of official duties.

House Bill 701 further provides that the person who is not the initial aggressor or engaged in criminal activity has no duty to retreat before using force neither may the finder of fact consider any such failure to retreat.

House Bill 701 – Page 2

House Bill 701 also amends NMSA 1978, § 30-2-8 to provide that if a person uses excusable use of force, it shall be a defense to that person's prosecution for any crime based on that conduct.

Lastly, House Bill 701 amends NMSA 1978, § 31-23-1 to provide for an award of attorney's fees and costs to a defendant in a civil action who was sued as a consequence of that defendant's justifiable use of force.

FISCAL IMPLICATIONS

According to the Attorney General, the implementations of the bill may lead to a decrease in prosecution of those who use deadly force, though it is unlikely. The implementation of the civil portion of the bill would eliminate some civil claims thus saving court resources as well as providing the person who was justified in using deadly force from being re-victimized by the perpetrator.

SIGNIFICANT ISSUES

According to the AODA, the HB 701 fixes the current statute which leaves a gap in protection to the individual who uses force, including deadly force to protect themselves, their families and their property. Currently the way the statute reads, that individual may be justified if he actually kills the perpetrator but if the perpetrator lives, the individual may face criminal charges for the use of force.

The bill cleans up gender issues such as "against himself, his wife" to "the person or the person's spouse."

There is already case law which does address the issue of self defense, and defense of others.' Some defendant's could use this statute to justify "vigilantly" type justice instead of letting law enforcement and the district attorney's do their jobs.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 701 relates to SB 109 in providing immunity from civil action for justifiable use of force.

TECHNICAL ISSUES

The term family is vague? How extended is family relation? What about a significant other, step-child, roommate?

The inclusion of the phrase "any crime based on that conduct" is overbroad and could impede law enforcement and district attorneys in prosecuting other crimes. Example; the perpetrator attacks the victim, the victim then uses force which incapacitates the perpetrator but then the victim takes the original perpetrators wallet.

Amend the bill in the first portion to define family and to include house-hold members.

Amend the bill to remove the term "any crime."

OTHER SUBSTANTIVE ISSUES

According to the Public Defender, several states across the country have implemented or are considering implementing such legislation. This bill seems eminently sensible in New Mexico, 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 themselves.

The presumption section of this bill, section “B” contains a 100 plus word sentence that is convoluted and confusing. It appears to mean that force can be used when there is an intruder in the home or other premise including a vehicle or, if the intruder is attempting a kidnapping or carjacking. This needs to be clarified and simplified.

The presumption that the homicide or use of force is justified does not apply in situations where the person against whom the force is being used “has a right to be in or is a lawful resident or owner of the dwelling or immediate premises or vehicle”. This section may be problematic when applied to victims of domestic abuse.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Currently as the Statute reads there is some room for interpretation. By enacting this Bill the room for interpretation is removed by making the Statute more specific to its meaning and what the consequences would be if action taken is questionable.

CS/svb