

1 HOUSE BILL 228

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Candy Spence Ezzell

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10 AN ACT

11 RELATING TO CRIMINAL LAW; PROVIDING FOR JUSTIFIED USE OF FORCE
12 BY AN INDIVIDUAL; PROVIDING FOR THE AWARD OF ATTORNEY FEES;
13 PRECLUDING CRIMINAL PROSECUTION FOR CERTAIN DEFENSIVE ACTIONS.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

18 "30-2-7. [~~JUSTIFIABLE HOMICIDE BY CITIZEN~~] JUSTIFIED USE
19 OF FORCE BY AN INDIVIDUAL.-- [~~Homicide is justifiable when~~
20 ~~committed by any person in any of the following cases:~~

21 ~~A. when committed in the necessary defense of his~~
22 ~~life, his family or his property or in necessarily defending~~
23 ~~against any unlawful action directed against himself, his wife~~
24 ~~or family];~~

25 ~~B. when committed in the lawful defense of himself~~

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1 ~~or of another and when there is a reasonable ground to believe~~
2 ~~a design exists to commit a felony or to do some great personal~~
3 ~~injury against such person or another, and there is imminent~~
4 ~~danger that the design will be accomplished; or~~

5 ~~G. when necessarily committed in attempting, by~~
6 ~~lawful ways and means, to apprehend any person for any felony~~
7 ~~committed in his presence or in lawfully suppressing any riot~~
8 ~~or in necessarily and lawfully keeping and preserving the~~
9 ~~peace.]~~

10 A. A person is justified in using force against
11 another person when and to the extent the person reasonably
12 believes that such force is necessary to defend the person or a
13 third person against another person's imminent or actual use of
14 unlawful force or trespass upon the person's or third person's
15 property.

16 B. Subject to Subsections C, D and E of this
17 section, a person is justified in using deadly force against
18 another person only if the person reasonably believes that such
19 force is necessary to defend the person or a third person
20 against another person's imminent or actual use of unlawful
21 deadly force or imminent or actual commission of a felony that
22 involves the use of force or a deadly weapon.

23 C. A person who uses any level of defensive force,
24 including deadly force, against another person shall be
25 presumed reasonably to believe such force is necessary to

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1 defend the person or a third person against another person's
2 imminent use of unlawful deadly force or imminent commission of
3 a felony that involves the use of force or a deadly weapon
4 when:

5 (1) the person against whom the defensive
6 force is used, at the time such force is used:

7 (a) is unlawfully or forcefully
8 entering, or has unlawfully or forcefully entered and is
9 present within, the dwelling, place of work or occupied vehicle
10 of the person using defensive force; or

11 (b) has removed or is attempting to
12 remove another person against such other person's will from the
13 dwelling, place of work or occupied vehicle of the person using
14 defensive force; and

15 (2) the person using defensive force knows or
16 has reason to believe that any of the conditions set forth in
17 Paragraph (1) of this subsection exists.

18 D. The presumption set forth in Subsection C of
19 this section does not apply if:

20 (1) the person against whom defensive force is
21 used has a right to be in or is a lawful resident or owner of
22 the dwelling, place of work or occupied vehicle;

23 (2) the person using defensive force is
24 engaged in criminal activity; or

25 (3) the person against whom defensive force is

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1 used is a law enforcement officer engaged in the lawful
2 performance of official duties.

3 E. A person who is not the initial aggressor and is
4 not engaged in criminal activity shall have no duty to retreat
5 before using defensive force pursuant to this section if the
6 person is in a place where the person has a right to be. No
7 finder of fact shall be permitted to consider the person's
8 failure to retreat as evidence that the person's use of force
9 was unnecessary, excessive or unreasonable.

10 F. As used in this section:

11 (1) "deadly force" means force as described in
12 Paragraph (2) of this subsection that poses a threat of likely
13 death or serious physical injury to a person; and

14 (2) "force" means any or all of the following
15 actions directed at or upon another person or thing:

16 (a) words or actions that reasonably
17 convey the threat of imminent force;

18 (b) the presentation or display of the
19 means of force; or

20 (c) the application of physical force,
21 including by a weapon or through the actions of another."

22 SECTION 2. Section 31-23-1 NMSA 1978 (being Laws 1985,
23 Chapter 152, Section 1) is amended to read:

24 "31-23-1. CIVIL ACTION--CRIME--DAMAGES--IMMUNITY.--

25 A. No person shall be liable to a plaintiff in any

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1 civil action for damages if by a preponderance of the evidence
2 the damages were incurred as a consequence of:

3 [A.] (1) the commission, attempted commission
4 or flight subsequent to the commission of a crime by the
5 plaintiff; and

6 [B.] (2) the use of force or deadly force by
7 the defendant [which] that is justified pursuant to common law
8 or the law of the state.

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

14 SECTION 3. A new section of Chapter 31 NMSA 1978 is
15 enacted to read:

16 "[NEW MATERIAL] NO PROSECUTION FOR DEFENSIVE ACTION.--No
17 person shall be placed in legal jeopardy of any kind for
18 protecting that person or that person's family or personal
19 property or for coming to the aid of another person in imminent
20 peril, pursuant to the provisions of Section 30-2-7 NMSA 1978."