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FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/11

SPONSOR Ezzell LAST UPDATED _____ HB 228

SHORT TITLE Justified Use of Force by Individual SB _____

ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)
 Duplicates SB 220

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total			Unknown*			General Fund

(Parenthesis () Indicate Expenditure Decreases) *The courts cannot determine if this bill will have a positive or negative impact.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General (AGO)
 Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

House Bill 228 amends existing law NMSA 1978 Section 30-2-7 and 31-23-1 and creates a new section of Chapter 31 of NMSA 1978.

The bill sets out when self defense or defense of others is appropriate when analyzing a homicide case. One change to this section is to add a justified use of force in protecting a third person's property. Under the current law, one may only use deadly force in protecting one's own dwelling and can use non-deadly force to protect one's own property or property in one's own possession

if it is reasonable and necessary under the circumstances. This broadens the legal definition for justified force.

Additionally, it limits the type of felony which if imminent or actual would justify deadly force. Currently, the law allows any felony and the bill proposes limiting it to felonies involving the use of force or a deadly weapon.

HB 228 adds a new presumption that that the person who uses the defensive force is presumed to reasonably believe that the force is necessary when the person against whom the force is used is unlawfully or forcefully entering or is present within the person using defensive force's dwelling, place of work or occupied vehicle; or has removed or is attempting to remove person against his will from the dwelling, work place or occupied vehicle and the person using defensive force knows or has reason to know that either of these conditions exists.

A person may not use defensive force in the following circumstances:

- the person against whom defensive force is used has a right to be in or is a lawful resident or owner of the dwelling, place of work or occupied 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 lawful performance of official duties.

The bill delineates that there is no duty to retreat before using defensive force if the person is in a place where the person has a right to be. The term “great personal injury” is changed to “serious physical injury”.

In addition the bill mandates the court to award reasonable attorney fees, court costs, loss of income and expense in any civil action brought if the court finds that the defendant is not liable. Furthermore there will be no prosecution for a person acting under the provisions of this bill.

FISCAL IMPLICATIONS

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 the enforcement of this law and commenced prosecutions. 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.

Additionally, these changes significantly change the law in a way that will require litigation as to its meaning and application. This increase in litigation will affect both time and resources in the judiciary. The exact costs are unknown at this time.

The bill may limit the number of homicide and other violent crime cases prosecuted which could be a cost savings to the courts.

SIGNIFICANT ISSUES

The AODA states that HB 228 does not define or explain what “the application of physical force, including by a weapon” means. The phrase could mean to threaten or to strike another with a weapon. This ambiguity could lead to problems later on when the courts grapple with trying to decide what the legislature meant.

The PDD notes that the bill mixes the defenses to a criminal case with its implications in civil matters. The section that deals with civil matters seems best excised and moved to an appropriate section outside the criminal code. For example, whether a civil defendant should receive an award of attorney’s fees does not seem appropriate for a criminal statute.

The AGO provided the following:

Subsection A justifies the use of force upon a person committing the misdemeanor offense of trespass. Everything else in the statute that justifies use of force are felony offenses. The use of deadly force in response to a non-violent misdemeanor offense is not supported in other areas of the law and is not reasonable.

Subsection C (1) does not provide for the person using defensive force in a public venue or a private venue that does not belong to that person. An example is when an individual who would potentially be using deadly force has sought refuge outside of their own dwelling, workplace, or vehicle.

Subsection D could be used as an affirmative defense in an instance where a person using force still has legal standing where the force was used but would otherwise be considered to be the primary aggressor; i.e. Domestic Violence instances involving individuals that had previously cohabitated.

Subsection D (3) does not include private security also lawfully engaged in the performance of their duties such as bouncers or store detectives. It appears that the intent of the legislation is to outline the legality of use of force, in places where it is common for private security to be employed like a place of work or an individual’s dwelling.

ADMINISTRATIVE IMPLICATIONS

Agencies affected by this bill can handle the provisions of this bill with existing staff as part of ongoing responsibilities.

DUPLICATION

SB 220 duplicates HB 228 except for the short title. SB 220 refers to “individuals’ in the plural while HB 228 uses the singular “individual”.

TECHNICAL ISSUES

The AGO offered the following:

Subsection C is confusing because the author is attempting to make reference to

subsection B and what the person using deadly force believes, but it is unnecessary and can just as easily be resolved by eliminating that language and putting in that the person is presumed justified in the use of force when the conditions outlined in (C) (1) and (2) exist.

DW/mew