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HOUSE BILL 163

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

John A. Heaton

AN ACT

RELATING TO CRIMINAL LAW; PROVIDING FOR JUSTIFIABLE USE OF
DEFENSIVE FORCE.

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
against [himself, his wife] the person or the person's spouse

underscored material = new
[bracketed material] = delete

1 or family;

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

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

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

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1 forcible entry or unlawful and forcible act was occurring or
2 had occurred. The presumption in this subsection shall not
3 apply if:

4 (1) the person against whom defensive force
5 is used has a right to be in or is a lawful resident or owner
6 of 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
10 is used is a law enforcement officer engaged in the
11 performance of official duties.

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

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1 homicide or use of defensive force, including deadly force,
2 and, upon ~~[his]~~ the person's trial, the killing ~~[shall be]~~ or
3 use of defensive force is found to have been excusable or
4 justifiable, the jury shall find ~~[such]~~ the person not guilty
5 and ~~[he]~~ the person 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
22 is not liable as provided in Subsection A of this section."