

2 C: 3-4

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2C:3-4, 2C:3-6 and 2C:3-11 (Force-- justifiable use-- under criminal code)

CHAPTER 120

Laws Of: 1987

Bill No: A498

Sponsor(s): Shusted, Kern and Paterniti

Date Introduced: Pre-filed

Committee: **Assembly:** Judiciary

Senate: Judiciary

Amended during passage: Yes Assembly Committee Substitute (OCR) enacted.

Date of Passage: **Assembly:** March 10, 1987

Senate: October 30, 1986

Date of Approval: May 15, 1987

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: **Assembly** Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

See clipping-- attached:

"Greater legal protection is enacted for homeowner using 'deadly force', 5-19-87 Star Ledger.

"Bill permitting 'deadly force' defense passes Assembly," 2-29-87 Star Ledger.

120

87

5-15-87

[OFFICIAL COPY REPRINT]
 ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 498, 323 and 297

STATE OF NEW JERSEY

ADOPTED FEBRUARY 27, 1986

Sponsored by Assemblymen SHUSTED, KERN and PATERNITI

AN ACT concerning the justifiable use of force and deadly force under certain circumstances and amending N. J. S. 2C:3-4, N. J. S. 2C:3-6 and N. J. S. 2C:3-11.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
 2 *of New Jersey:*

1 1. N. J. S. 2C:3-4 is amended to read as follows:

2 2C:3-4. Use of Force in Self-Protection. a. Use of force justifi-
 3 fiable for protection of the person. Subject to the provisions of
 4 this section and of section 2C:3-9, the use of force upon or toward
 5 another person is justifiable when the actor reasonably believes
 6 that such force is immediately necessary for the purpose of pro-
 7 tecting himself against the use of unlawful force by such other
 8 person on the present occasion.

9 b. Limitations on justifying necessity for use of force.

10 (1) The use of force is not justifiable under this section:

11 (a) To resist an arrest which the actor knows is being made by
 12 a peace officer in the performance of his duties, although the arrest
 13 is unlawful, unless the peace officer employs unlawful force to
 14 effect such arrest; or

15 (b) To resist force used by the occupier or possessor of prop-
 16 erty or by another person on his behalf, where the actor knows that
 17 the person using the force is doing so under a claim of right to
 18 protect the property, except that this limitation shall not apply if:

19 (i) The actor is a public officer acting in the performance
 20 of his duties or a person lawfully assisting him therein or a
 21 person making or assisting in a lawful arrest;

22 (ii) The actor has been unlawfully dispossessed of the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Senate committee amendments adopted October 2, 1986.**

23 property and is making a reentry or recaption justified by
24 section 2C:3-6; or

25 (iii) The actor reasonably believes that such force is neces-
26 sary to protect himself against death or serious bodily harm.

27 (2) The use of deadly force is not justifiable under this section
28 unless the actor reasonably believes that such force is necessary to
29 protect himself against death or serious bodily harm; nor is it
30 justifiable if:

31 (a) The actor, with the purpose of causing death or serious
32 bodily harm, provoked the use of force against himself in the same
33 encounter; or

34 (b) The actor knows that he can avoid the necessity of using such
35 force with complete safety by retreating or by surrendering pos-
36 session of a thing to a person asserting a claim of right thereto
37 or by complying with a demand that he abstain from any action
38 which he has no duty to take, except that:

39 (i) The actor is not obliged to retreat from his dwelling,
40 unless he was the initial aggressor or is assailed in his dwelling
41 by another person whose dwelling the actor knows it to be; and

42 (ii) A public officer justified in using force in the perfor-
43 mance of his duties or a person justified in using force in his
44 assistance or a person justified in using force in making an
45 arrest or preventing an escape is not obliged to desist from
46 efforts to perform such duty, effect such arrest or prevent
47 such escape because of resistance or threatened resistance by
48 or on behalf of the person against whom such action is directed.

49 (3) Except as required by paragraphs (1) and (2) of this sub-
50 section, a person employing protective force may estimate the
51 necessity of using force when the force is used, without retreating,
52 surrendering possession, doing any other act which he has no legal
53 duty to do or abstaining from any lawful action.

54 *c. (1) Notwithstanding the provisions of N. J. S. 2C:3-5, N. J. S.*
55 *2C:3-9, of this section, the use of force or deadly force upon or*
56 *toward an intruder who is unlawfully in a dwelling is justifiable*
57 *when the actor reasonably believes that the force is immediately*
58 *necessary for the purpose of protecting himself or other persons*
59 *in the dwelling against the use of unlawful force by the intruder*
60 *on the present occasion.*

61 (2) *A reasonable belief exists when the actor, to protect him-*
62 *self or a third person, was in his own dwelling at the time of the*
63 *offense or was privileged to be thereon*[, and:*

64 (a) *The* * *and the* * *encounter between the actor and intruder*

65 *was sudden and unexpected, compelling the actor to act in-*
 65A *stantly****[; or]*** *and:**

66 ***[(b)]*** **(a)* The actor reasonably believed that the intruder*
 67 *would inflict personal injury upon the actor or others in the*
 67A *dwelling; or*

68 ***[(c)]*** **(b)* The actor demanded that the intruder disarm,*
 69 *surrender or withdraw, and the intruder refused to do so.*

70 (3) *An actor employing protective force may estimate the neces-*
 71 *sity of using force when the force is used, without retreating, sur-*
 72 *rendering possession, withdrawing or doing any other act which*
 73 *he has no legal duty to do or abstaining from any lawful action.*

1 2. N. J. S. 2C:3-6 is amended to read as follows:

2 2C:3-6. Use of Force in Defense of Premises or Personal
 3 Property. a. Use of force in defense of premises. Subject to the
 4 provisions of this section and of section 2C:3-9, the use of force
 5 upon or toward the person of another is justifiable when the actor
 6 is in possession or control of premises or is licensed or privileged
 7 to be thereon and he reasonably believes such force necessary to
 8 prevent or terminate what he reasonably believes to be the com-
 9 mission or attempted commission of a criminal trespass by such
 10 other person in or upon such premises.

11 b. Limitations on justifiable use of force in defense of premises.

12 (1) Request to desist. The use of force is justifiable under this
 13 section only if the actor first requests the person against whom
 14 such force is used to desist from his interference with the property,
 15 unless the actor reasonably believes that:

16 (a) Such request would be useless;

17 (b) It would be dangerous to himself or another person to make
 18 the request; or

19 (c) Substantial harm will be done to the physical condition of
 20 the property which is sought to be protected before the request can
 21 effectively be made.

22 (2) Exclusion of trespasser. The use of force is not justifiable
 23 under this section if the actor knows that the exclusion of the
 24 trespasser will expose him to substantial danger of serious bodily
 25 harm.

26 (3) Use of deadly force. The use of deadly force is not justifiable
 27 under subsection a. of this section unless the actor reasonably
 28 believes that:

29 (a) The person against whom the force is used is attempting to
 30 dispossess him of his dwelling otherwise than under a claim of
 31 right to its possession; or

32 (b) The person against whom the force is used is attempting to

33 commit or consummate arson, burglary, robbery or other criminal
34 theft or property destruction; except that

35 (c) Deadly force does not become justifiable under subsections
36 (a) and (b) of this subsection unless *the actor reasonably believes*
37 *that:*

38 (i) The person against whom it is employed has employed
39 or threatened deadly force against or in the presence of the
40 actor; or

41 (ii) The use of force other than deadly force to *terminate*
42 *or prevent the commission or the consummation of the crime*
43 *would expose the actor or another in his presence to substan-*
44 *tial danger of [serious] bodily harm. An actor within a dwell-*
45 *ing shall be presumed to have a reasonable belief in the exis-*
46 *tence of the danger. The State must rebut this presumption*
47 *by proof beyond a reasonable doubt.*

48 c. Use of force in defense of personal property. Subject to the
49 provisions of subsection d. of this section and of section 2C:3-9,
50 the use of force upon or toward the person of another is justifiable
51 when the actor reasonably believes it necessary to prevent what he
52 reasonably believes to be an attempt by such other person to commit
53 theft, criminal mischief or other criminal interference with personal
54 property in his possession or in the possession of another for whose
55 protection he acts.

56 d. Limitations on justifiable use of force in defense of personal
57 property.

58 (1) Request to desist and exclusion of trespasser. The limita-
59 tions of subsection b. (1) and (2) of this section apply to subsec-
60 tion c. of this section.

61 (2) Use of deadly force. The use of deadly force in defense of
62 personal property is not justified unless justified under another
63 provision of this chapter.

1 3. N. J. S. 2C:3-11 is amended to read as follows:

2 2C:3-11. Definitions. In this chapter, unless a different mean-
3 ing plainly is required: a. "Unlawful force" means force, including
4 confinement, which is employed without the consent of the person
5 against whom it is directed and the employment of which consti-
6 tutes an offense or actionable tort or would constitute such offense
7 or tort except for a defense (such as the absence of intent, negli-
8 gence, or mental capacity; duress, youth, or diplomatic status)
9 not amounting to a privilege to use the force. Assent constitutes
10 consent, within the meaning of this section, whether or not it other-
11 wise is legally effective, except assent to the infliction of death or
12 serious bodily harm.

13 b. "Deadly force" means force which the actor uses with the
14 purpose of causing or which he knows to create a substantial risk
15 of causing death or serious bodily harm. Purposely firing a fire-
16 arm in the direction of another person or at a vehicle, building or
17 structure in which another person is believed to be constitutes
18 deadly force. A threat to cause death or serious bodily harm, by the
19 production of a weapon or otherwise, so long as the actor's purpose
20 is limited to creating an apprehension that he will use deadly force
21 if necessary, does not constitute deadly force.

22 c. "Dwelling" means any building or structure, though movable
23 or temporary, or a portion thereof, which is for the time being the
24 actor's home or place or lodging except that, as used in 2C:3-7, the
25 building or structure need not be the actor's own home or place of
26 lodging.

27 d. "Serious bodily harm" means bodily harm which creates a
28 substantial risk of death or which causes serious, permanent dis-
29 figurement or protracted loss or impairment of the function of any
30 bodily member or organ or which results from aggravated sexual
31 assault or sexual assault.

32 e. "*Bodily harm*" means *physical pain, or temporary disfigure-*
33 *ment, or impairment of physical condition.*

1 4. This act shall take effect immediately.

CRIMES

Prescribes the justifiable use of deadly force under certain cir-
cumstances.

ASSEMBLY, No. 297

Introduced Pending Technical Review by Legislative Counsel
PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Assemblyman PATERNITI

ASSEMBLY, No. 538

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblymen PATERNITI, PELLECCCHIA, PATERO, HAY-
TAIAN, ZANGARI, Assemblywoman GARVIN, Assemblymen
DORIA and KERN

AN ACT concerning the use of deadly force and amending N. J. S.
2C:3-4 and N. J. S. 2C:3-6.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. N. J. S. 2C:3-4 is amended to read as follows:

2 2C:3-4. Use of Force in Self-Protection. a. Use of force justi-
3 fiable for protection of the person. Subject to the provisions of
4 this section and of section 2C:3-9, the use of force upon or toward
5 another person is justifiable when the actor reasonably believes
6 that such force is immediately necessary for the purpose of protect-
7 ing himself against the use of unlawful force by such other person
8 on the present occasion.

9 b. Limitations on justifying necessity for use of force.

10 (1) The use of force is not justifiable under this section:

11 (a) To resist an arrest which the actor knows is being made by
12 a peace officer in the performance of his duties, although the arrest
13 is unlawful, unless the peace officer employs unlawful force to
14 effect such arrest; or

15 (b) To resist force used by the occupier or possessor of prop-
16 erty or by another person on his behalf, where the actor knows that
17 the person using the force is doing so under a claim of right to
18 protect the property, except that this limitation shall not apply if:

19 (i) The actor is a public officer acting in the performance of
20 his duties or a person lawfully assisting him therein or a

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

21 person making or assisting in a lawful arrest;

22 (ii) The actor has been unlawfully dispossessed of the
23 property and is making a reentry or recaption justified by
24 section 2C:3-6; or

25 (iii) The actor reasonably believes that such force is neces-
26 sary to protect himself against death or serious bodily harm.

27 (2) The use of deadly force is not justifiable under this section
28 unless the actor reasonably believes that such force is necessary to
29 protect himself against [death or serious] bodily harm; nor is it
30 justifiable if:

31 (a) The actor, with the purpose of causing death or serious
32 bodily harm, provoked the use of force against himself in the same
33 encounter; or

34 (b) The actor knows that he can avoid the necessity of using such
35 force with complete safety by retreating or by surrendering pos-
36 session of a thing to a person asserting a claim of right thereto
37 or by complying with a demand that he abstain from any action
38 which he has no duty to take, except that:

39 (i) The actor is not obliged to retreat from his dwelling,
40 unless he was the initial aggressor or is assailed in his dwelling
41 by another person whose dwelling the actor knows it to be; and

42 (ii) A public officer justified in using force in the perfor-
43 mance of his duties or a person justified in using force in his
44 assistance or a person justified in using force in making an
45 arrest or preventing an escape is not obliged to desist from
46 efforts to perform such duty, effect such arrest or prevent
47 such escape because of resistance or threatened resistance by
48 or on behalf of the person against whom such action is directed.

49 (3) Except as required by paragraphs (1) and (2) of this sub-
50 section, a person employing protective force may estimate the
51 necessity of using force when the force is used, without retreating,
52 surrendering possession, doing any other act which he has no legal
53 duty to do or abstaining from any lawful action.

1 2. N. J. S. 2C:3-6 is amended to read as follows:

2 2C:3-6. Use of Force in Defense of Premises or Personal
3 Property. a. Use of force in defense of premises. Subject to the
4 provisions of this section and of section 2C:3-9, the use of force
5 upon or toward the person of another is justifiable when the actor
6 is in possession or control of premises or is licensed or privileged
7 to be thereon and he reasonably believes such force necessary to
8 prevent or terminate what he reasonably believes to be the com-
9 mission or attempted commission of a criminal trespass by such

10 other person in or upon such premises.

11 b. Limitations on justifiable use of force in defense of premises.

12 (1) Request to desist. The use of force is justifiable under this
13 section only if the actor first requests the person against whom
14 such force is used to desist from his interference with the property,
15 unless the actor reasonably believes that:

16 (a) Such request would be useless;

17 (b) It would be dangerous to himself or another person to make
18 the request; or

19 (c) Substantial harm will be done to the physical condition of
20 the property which is sought to be protected before the request can
21 effectively be made.

22 (2) Exclusion of trespasser. The use of force is not justifiable
23 under this section if the actor knows that the exclusion of the
24 trespasser will expose him to substantial danger of serious bodily
25 harm.

26 (3) Use of deadly force. The use of deadly force is not justifiable
27 under subsection a. of this section unless the actor reasonably
28 believes that:

29 (a) The person against whom the force is used is attempting to
30 dispossess him of his dwelling otherwise than under a claim of
31 right to its possession; or

32 (b) The person against whom the force is used is attempting to
33 commit or consummate arson, burglary, robbery or other criminal
34 theft or property destruction; except that

35 (c) Deadly force does not become justifiable under subsections
36 (a) and (b) of this subsection unless:

37 (i) The person against whom it is employed has employed
38 or threatened deadly force against or in the presence of the
39 actor; or

40 (ii) The use of force other than deadly force to prevent the
41 commission or the consummation of the crime would expose
42 the actor or another in his presence to substantial danger of
43 serious bodily harm.

44 c. Use of force in defense of personal property. Subject to the
45 provisions of subsection d. of this section and of section 2C:3-9,
46 the use of force upon or toward the person of another is justifiable
47 when the actor reasonably believes it necessary to prevent what he
48 reasonably believes to be an attempt by such other person to commit
49 theft, criminal mischief or other criminal interference with personal
50 property in his possession or in the possession of another for whose
51 protection he acts.

52 d. Limitations on justifiable use of force in defense of personal
53 property.

54 (1) Request to desist and exclusion of trespasser. The limita-
55 tions of subsection b. (1) and (2) of this section apply to subsec-
56 tion c. of this section.

57 (2) Use of deadly force. The use of deadly force in defense of
58 personal property is not justified unless justified under another
59 provisions of this chapter.

1 3. This act shall take effect immediately.

STATEMENT

This bill expands the circumstances under which the use of deadly force would be justifiable in self-defense and in defense of one's dwelling place.

Section 1 of the bill amends N. J. S. 2C:3-4 to provide that the use of deadly force in self-defense would be justifiable if the person using it reasonably believed that the use of deadly force was necessary to protect himself against bodily harm.

Section 2 of the bill amends N. J. S. 2C:3-6 to remove two conditions on the use of deadly force in defense of premises that are now in the law. The first condition removed by the bill is the requirement that the person against whom the deadly force is used had used or threatened to use deadly force himself. The second condition removed by the bill is the requirement that use of less force would have exposed the actor or someone else to the danger of serious bodily harm.

ASSEMBLY, No. 323

Introduced Pending Technical Review by Legislative Counsel
PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Assemblyman KERN

ASSEMBLY, No. 931

STATE OF NEW JERSEY

INTRODUCED JANUARY 30, 1984

By Assemblymen KERN, FELICE, MARKERT, SCHUBER, GILL,
GIRGENTI, KOSCO and SCHWARTZ

AN ACT concerning the justifiable use of force and deadly force by the owner or other legal occupant of a dwelling, amending sections 2C:3-4 and 2C:3-5 of Title 2C of the New Jersey Statutes and supplementing chapter 3 of Title 2C of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. N. J. S. 2C:3-4 is amended to read as follows:

2 2C:3-4. Use of Force in Self-Protection. a. Use of force justi-
3 fiable for protection of the person. Subject to the provisions of
4 this section and of section 2C:3-9 *and except as provided in*
5 *section 3 of P. L., c. . . ., (C.) (now pending be-*
6 *fore the Legislature as Assembly Bill No. . . . of 1984)*, the use of
7 force upon or toward another person is justifiable when the actor
8 reasonably believes that such force is immediately necessary for
9 the purpose of protecting himself against the use of unlawful force
10 by such other person on the present occasion.

11-12 b. Limitations on justifying necessity for use of force.

13 (1) The use of force is not justifiable under this section:

14 (a) To resist an arrest which the actor knows is being made by
15 a peace officer in the performance of his duties, although the arrest
16 is unlawful, unless the peace officer employs unlawful force to
17 effect such arrest; or

18 (b) To resist force used by the occupier or possessor of prop-
19 erty or by another person on his behalf, where the actor knows that

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics thus is new matter.

20 the person using the force is doing so under a claim of right to
21 protect the property, except that this limitation shall not apply if:

22 (i) The actor is a public officer acting in the performance of
23 his duties or a person lawfully assisting him therein or a
24 person making or assisting in a lawful arrest;

25 (ii) The actor has been unlawfully dispossessed of the
26 property and is making a reentry or recaption justified by
27 section 2C:3-6; or

28 (iii) The actor reasonably believes that such force is neces-
29 sary to protect himself against death or serious bodily harm.

30 (2) The use of deadly force is not justifiable under this section
31 unless the actor reasonably believes that such force is necessary to
32 protect himself against death or serious bodily harm; nor is it
33 justifiable if:

34 (a) The actor, with the purpose of causing death or serious
35 bodily harm, provoked the use of force against himself in the same
36 encounter; or

37 (b) The actor knows that he can avoid the necessity of using such
38 force with complete safety by retreating or by surrendering pos-
39 session of a thing to a person asserting a claim of right thereto
40 or by complying with a demand that he abstain from any action
41 which he has no duty to take, except that:

42 (i) The actor is not obliged to retreat from his dwelling[,
43 unless he was the initial aggressor or is assailed in his dwelling
44 by another person whose dwelling the actor knows it to be];
45 and

46 (ii) A public officer justified in using force in the perfor-
47 mance of his duties or a person justified in using force in his
48 assistance or a person justified in using force in making an
49 arrest or preventing an escape is not obliged to desist from
50 efforts to perform such duty, effect such arrest or prevent
51 such escape because of resistance or threatened resistance by
52 or on behalf of the person against whom such action is directed.

53 (3) Except as required by paragraphs (1) and (2) of this sub-
54 section, a person employing protective force may estimate the
55 necessity of using force when the force is used, without retreating,
56 surrendering possession, doing any other act which he has no legal
57 duty to do or abstaining from any lawful action.

1 2. N. J. S. 2C:3-5 is amended to read as follows:

2 2C:3-5. Use of Force for the Protection of Other Persons.

3 a. Subject to the provisions of this section and of section 2C:3-9
4 and except as provided in section 3 of P. L., c. . . ., (C.
5) (now pending before the Legislature as Assembly Bill

6 *No. . . . of 1984*), the use of force upon or toward the person of
7-8 another is justifiable to protect a third person when:

9 (1) The actor would be justified under section 2C:3-4 in using
10 such force to protect himself against the injury he believes to be
11 threatened to the person whom he seeks to protect; and

12 (2) Under the circumstances as the actor reasonably believes
13 them to be, the person whom he seeks to protect would be justified
14 in using such protective force; and

15 (3) The actor reasonably believes that his intervention is neces-
16 sary for the protection of such other person.

17 b. Notwithstanding subsection a. of this section:

18 (1) When the actor would be obliged under section 2C:3-4
19 b. (2) (b) to retreat or take other action he is not obliged to do so
20 before using force for the protection of another person, unless he
21 knows that he can thereby secure the complete safety of such other
22 person; and

23 (2) When the person whom the actor seeks to protect would be
24 obliged under section 2C:3-4 b. (2) (b) to retreat or take similar
25 action if he knew that he could obtain complete safety by so doing,
26 the actor is obliged to try to cause him to do so before using force
27 in his protection if the actor knows that he can obtain complete
28 safety in that way; and

29 (3) Neither the actor nor the person whom he seeks to protect
30 is obliged to retreat when in the other's dwelling to any greater
31 extent than in his own.

1 3. (New section) Use of Force for the Protection of Persons in
2 a Dwelling. a. Notwithstanding the provisions of N. J. S. 2C:3-4,
3 N. J. S. 2C:3-5 and N. J. S. 2C:3-9, the use of force or deadly
4 force upon or toward an intruder who is unlawfully in a dwelling
5 is justifiable when the actor reasonably believes that the force is
6 immediately necessary for the purpose of protecting himself or
7 other persons in the dwelling against the use of unlawful force
8 by the intruder on the present occasion.

9 b. A reasonable belief exists when the actor, to protect himself
10 or a third person, was in his own dwelling at the time of the
11 offense or was privileged to be thereon, and;

12 (1) The encounter between the actor and intruder was sudden
13 and unexpected, compelling the actor to act instantly; or

14 (2) The actor reasonably believed that the intruder would inflict
15 personal injury upon the actor or others in the dwelling; or

16 (3) The actor demanded that the intruder disarm, surrender
17 or withdraw, and the intruder refused to do so.

18 e. An actor employing protective force may estimate the necessity
19 of using force when the force is used, without retreating, surrender-
20 ing possession, withdrawing or doing any other act which he has
21 no legal duty to do or abstaining from any lawful action.

1 4. This act shall take effect immediately.

STATEMENT

This bill allows the intended victim or other legal occupants of a dwelling to use force against an unlawful intruder and provides various defenses to criminal liability.

ASSEMBLY, No. 498

Introduced Pending Technical Review by Legislative Counsel
PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Assemblyman SHUSTED

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 326 and 538

STATE OF NEW JERSEY

ADOPTED FEBRUARY 6, 1984

Sponsored by Assemblymen SHUSTED and PATERNITI

AN ACT concerning the justifiable use of deadly force under certain circumstances and amending N. J. S. 2C:3-6, N. J. S. 2C:3-9 and N. J. S. 2C:3-11.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. N. J. S. 2C:3-6 is amended to read as follows:

2 2C:3-6. Use of Force in Defense of Premises or Personal
3 Property. a. Use of force in defense of premises. Subject to the
4 provisions of this section and of section 2C:3-9, the use of force
5 upon or toward the person of another is justifiable when the actor
6 is in possession or control of premises *or its curtilage* or is licensed
7 or privileged to be thereon and he reasonably believes such force
8 necessary to prevent or terminate what he reasonably believes to
9 be the commission or attempted commission of a criminal trespass
10 by such other person in or upon such premises.

11 b. Limitations on justifiable use of force in defense of premises.

12 (1) Request to desist. The use of force is justifiable under this
13 section only if the actor first requests the person against whom
14 such force is used to desist from his interference with the property,
15 unless the actor reasonably believes that:

16 (a) Such request would be useless;

17 (b) It would be dangerous to himself or another person to make
18 the request; or

19 (c) Substantial harm will be done to the physical condition of
20 the property which is sought to be protected before the request can
21 effectively be made.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.
Matter printed in italics *thus* is new matter.

22 (2) Exclusion of trespasser. The use of force is not justifiable
 23 under this section if the actor knows that the exclusion of the
 24 trespasser will expose him to substantial danger of serious bodily
 25 harm.

26 (3) Use of deadly force. The use of deadly force is not justifiable
 27 under subsection a. of this section unless the actor reasonably
 28 believes that:

29 (a) The person against whom the force is used is attempting to
 30 dispossess him of his dwelling otherwise than under a claim of
 31 right to its possession; or

32 (b) The person against whom the force is used is attempting to
 33 commit or consummate arson, burglary, robbery or other criminal
 34 theft or property destruction; except that

35 (c) Deadly force does not become justifiable under subsections
 36 (a) and (b) of this subsection unless *the actor reasonably believes*
 37 *that:*

38 (i) The person against whom it is employed has employed
 39 or threatened deadly force against or in the presence of the
 40 actor; or

41 (ii) The use of force other than deadly force to *terminate*
 42 *or prevent the commission or the consummation of the*
 43 **[crime]** *criminal trespass* would expose the actor or another
 44 in his presence to substantial danger of **[serious]** bodily harm.
 45 *An actor within a dwelling shall be presumed to have a reason-*
 46 *able belief in the existence of such danger. The State must*
 47 *rebut this presumption by proof beyond a reasonable doubt.*

48 c. Use of force in defense of personal property. Subject to the
 49 provisions of subsection d. of this section and of section 2C:3-9,
 50 the use of force upon or toward the person of another is justifiable
 51 when the actor reasonably believes it necessary to prevent what he
 52 reasonably believes to be an attempt by such other person to commit
 53 theft, criminal mischief or other criminal interference with personal
 54 property in his possession or in the possession of another for whose
 55 protection he acts.

56 d. Limitations on justifiable use of force in defense of personal
 57 property.

58 (1) Request to desist and exclusion of trespasser. The limita-
 59 tions of subsection b. (1) and (2) of this section apply to subsec-
 60 tion c. of this section.

61 (2) Use of deadly force. The use of deadly force in defense of
 62 personal property is not justified unless justified under another
 63 provision of this chapter.

1 2. N. J. S. 2C:3-9 is amended to read as follows:

2 2C:3-9. Mistake of Law as to Unlawfulness of Force or Legality
 3 of Arrest; Reckless or Negligent Use of Excessive But Otherwise
 4 Justifiable Force; Reckless or Negligent Injury or Risk of Injury
 5 to Innocent Persons. a. The justification afforded by sections
 6 2C:3-4 to 2C:3-7 is unavailable when:

7 (1) The actor's belief in the unlawfulness of the force or con-
 8 duct against which he employs protective force or his belief in the
 9 lawfulness of an arrest which he endeavors to effect by force is
 10 erroneous; and

11 (2) His error is due to ignorance or mistake as to the provisions
 12 of the code, any other provisions of the criminal law or the law
 13 governing the legality of an arrest or search.

14 b. Deleted by amendment (P. L. 1981, c. 290).

15 c. When the actor is justified under sections 2C:3-3 to 2C:3-8 in
 16 using force upon or toward the person of another but he recklessly
 17 or negligently injures or creates a risk of injury to innocent per-
 18 sons, the justification afforded by those sections is unavailable in a
 19 prosecution for such recklessness or negligence towards innocent
 20 persons.

21 d. *Where the justifications afforded in sections 2C:3-4 to 2C:3-8*
 22 *are unavailable because the actor's belief is unreasonable:*

23 (1) *An actor who is reckless as to the existence of the circum-*
 24 *stances justifying the use of force pursuant to section 2C:3-4 to*
 25 *2C:3-8, or who is reckless as to the amount of force necessary may*
 26 *not be convicted of an offense that requires purpose or knowledge*
 27 *as to any result or circumstance element but he may be convicted of*
 28 *a lesser included offense requiring recklessness or negligence as to*
 29 *a result or circumstance element.*

30 (2) *An actor who is negligent as to the existence of the circum-*
 31 *stances justifying the use of force pursuant to sections 2C:3-4 to*
 32 *2C:3-8, or who is negligent as to the amount of force necessary*
 33 *may not be convicted of an offense that requires purpose, knowl-*
 34 *edge or recklessness as to any result or circumstance element but*
 35 *he may be convicted of a lesser included offense requiring negli-*
 36 *gence as to a result or circumstance element.*

1 3. N. J. S. 2C:3-11 is amended to read as follows:

2 2C:3-11. Definitions. In this chapter, unless a different mean-
 3 ing plainly is required: a. "Unlawful force" means force, including
 4 confinement, which is employed without the consent of the person
 5 against whom it is directed and the employment of which consti-
 6 tutes an offense or actionable tort or would constitute such offense
 7 or tort except for a defense (such as the absence of intent, negli-
 8 gence, or mental capacity; duress, youth, or diplomatic status)

9 not amounting to a privilege to use the force. Assent constitutes
 10 consent, within the meaning of this section, whether or not it other-
 11 wise is legally effective, except assent to the infliction of death or
 12 serious bodily harm.

13 b. "Deadly force" means force which the actor uses with the
 14 purpose of causing or which he knows to create a substantial risk
 15 of causing death or serious bodily harm. Purposely firing a fire-
 16 arm in the direction of another person or at a vehicle, building or
 17 structure in which another person is believed to be constitutes
 18 deadly force. A threat to cause death or serious bodily harm, by the
 19 production of a weapon or otherwise, so long as the actor's purpose
 20 is limited to creating an apprehension that he will use deadly force
 21 if necessary, does not constitute deadly force.

22 c. "Dwelling" means any building or structure, though movable
 23 or temporary, or a portion thereof, which is for the time being the
 24 actor's home or place of lodging *except that, as used in 2C:3-7, the*
 25 *building or structure need not be the actor's own home or place of*
 26 *lodging.*

27 d. "Serious bodily harm" means bodily harm which creates a
 28 substantial risk of death or which causes serious, permanent dis-
 29 figurement or protracted loss or impairment of the function of any
 30 bodily member or organ or which results from aggravated sexual
 31 assault or sexual assault.

32 e. "*Bodily harm*" means *physical pain, or temporary disfigure-*
 33 *ment, or impairment of physical condition.*

1 4. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to clarify the circumstances under which the use of force is justified. This bill changes three sections of the Criminal Code, N. J. S. 2C:3-6, N. J. S. 2C:3-9 and N. J. S. 2C:3-11. As provided in this bill, N. J. S. 2C:3-6(b) (3) (c) (ii) would justify the use of deadly force whenever the actor reasonably believes that a trespasser is upon the person's premises attempting to commit one of the crimes specified in subsection b. (3) (b), and the actor reasonably believes that employing less force would expose the actor or another to the danger of bodily injury. Also under this bill defense of a person's premises is also to include the curtilage of the premises.

An additional amendment to this section of law pertaining to the use of force in defense of premises or property creates a presumption allowing for the use of deadly force when a person in his

dwelling has reason to believe that use of less than deadly force would expose him or another person to substantial danger of bodily harm. In order to rebut this presumption, the State would be required to present proof beyond a reasonable doubt. According to present law, the burden of proving that such a belief is reasonable falls upon the person who is accused of unjustifiable use of deadly force.

Under current law "bodily harm" is not defined, therefore the changes to N. J. S. 2C:3-11 provided in this bill establish a designation for "bodily harm."

The addition in this bill to N. J. S. 2C:3-9 replaces N. J. S. 2C:3-9(b), which was deleted by P. L. 1981, c. 290. This addition avoids the possibility of convicting one who commits an offense requiring purpose or knowledge as to a circumstance or result element when that person did so because he made reckless or negligent mistake as to the existence of the circumstances justifying the use of force, or, a similar mistake in estimating the necessity for the force which was employed. It is provided, however, that a person may be convicted of a lesser included offense requiring recklessness or negligence as to a result or circumstance element of the crime.

It is believed that by these changes current law regarding the use of deadly force in defense of premises will become more reasonable for persons whose homes have been broken into or trespassed upon without opening it to the possibility of being abused.

ASSEMBLY, No. 255

Introduced Pending Technical Review by Legislative Counsel
PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Assemblyman KAVANAUGH

ASSEMBLY, No. 1862

STATE OF NEW JERSEY

INTRODUCED MAY 7, 1984

By Assemblyman KAVANAUGH

AN ACT authorizing townships with populations under 20,000 to enact ordinances providing for the appointment of local boards of health, and amending R. S. 26:3-9.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. R. S. 26:3-9 is amended to read as follows:

2 26:3-9. *a. The local board in every township having a popula-*
3 *tion of not more than 20,000 inhabitants shall be composed of the*
4 *members of the township committee, the township assessor or, if*
5 *the township has a board of assessors, the township clerk, and one*
6 *physician to be appointed by the township committee for a term of*
7 *three years from the time of his appointment and until his suc-*
8 *cessor is appointed***[, but any]***. The township committee may by*
9 *ordinance provide for the appointment of not more than two alter-*
10 *nate members. Alternate members shall be designated at the time*
11 *of appointment as "Alternate No. 1" and "Alternate No. 2." The*
12 *term of the alternate members shall be for two years, except that*
13 *of the first two alternate members appointed, one shall be appointed*
14 *for a term of one year so that the term of not more than one alter-*
15 *nate member shall expire in any one year. A vacancy occurring*
16 *otherwise than by expiration of term shall be filled by the appoint-*
17 *ing authority for the unexpired term only. Alternate members*
18 *may participate in discussions of the proceedings but may not vote*
19 *except in the absence or disqualification of a regular member. A*
20 *vote shall not be delayed in order that a regular member may vote*
21 *instead of an alternate member. In the event that a choice must be*

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics thus is new matter.

22 *made as to which alternate member is to vote, Alternate No. 1*
23 *shall vote.*

24 *b. Any* such township may by ordinance adopt the provisions of
25 subdivision B of this article and thereafter shall be subject to the
26 provisions thereof and shall not be subject to the provisions of this
27 subdivision of this article.

1 2. This act shall take effect immediately.

STATEMENT

This bill allows townships with populations under 20,000 to enact ordinances providing for the appointment of up to two alternate members to local boards of health. The alternates would act in the absence of a regular member. The bill is similar to recent legislation which authorized the appointment of alternate members of municipal planning and zoning boards. It is intended to assist local boards of health in carrying out their official duties by making it easier for them to meet quorum requirements, and to do without the participation of a regular member when a conflict of interest arises.

A255(1986)

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 498, 323 and 297

STATE OF NEW JERSEY

ADOPTED FEBRUARY 27, 1986

Sponsored by Assemblymen SHUSTED, KERN and PATERNITI

AN ACT concerning the justifiable use of force and deadly force under certain circumstances and amending N. J. S. 2C:3-4, N. J. S. 2C:3-6 and N. J. S. 2C:3-11.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. N. J. S. 2C:3-4 is amended to read as follows:

2 2C:3-4. Use of Force in Self-Protection. a. Use of force justi-
3 fiable for protection of the person. Subject to the provisions of
4 this section and of section 2C:3-9, the use of force upon or toward
5 another person is justifiable when the actor reasonably believes
6 that such force is immediately necessary for the purpose of pro-
7 tecting himself against the use of unlawful force by such other
8 person on the present occasion.

9 b. Limitations on justifying necessity for use of force.

10 (1) The use of force is not justifiable under this section:

11 (a) To resist an arrest which the actor knows is being made by
12 a peace officer in the performance of his duties, although the arrest
13 is unlawful, unless the peace officer employs unlawful force to
14 effect such arrest; or

15 (b) To resist force used by the occupier or possessor of prop-
16 erty or by another person on his behalf, where the actor knows that
17 the person using the force is doing so under a claim of right to
18 protect the property, except that this limitation shall not apply if:

19 (i) The actor is a public officer acting in the performance
20 of his duties or a person lawfully assisting him therein or a
21 person making or assisting in a lawful arrest;

22 (ii) The actor has been unlawfully dispossessed of the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.
Matter printed in italics *thus* is new matter.

23 property and is making a reentry or recaption justified by
24 section 2C:3-6; or

25 (iii) The actor reasonably believes that such force is neces-
26 sary to protect himself against death or serious bodily harm.

27 (2) The use of deadly force is not justifiable under this section
28 unless the actor reasonably believes that such force is necessary to
29 protect himself against death or serious bodily harm; nor is it
30 justifiable if:

31 (a) The actor, with the purpose of causing death or serious
32 bodily harm, provoked the use of force against himself in the same
33 encounter; or

34 (b) The actor knows that he can avoid the necessity of using such
35 force with complete safety by retreating or by surrendering pos-
36 session of a thing to a person asserting a claim of right thereto
37 or by complying with a demand that he abstain from any action
38 which he has no duty to take, except that:

39 (i) The actor is not obliged to retreat from his dwelling,
40 unless he was the initial aggressor or is assailed in his dwelling
41 by another person whose dwelling the actor knows it to be; and

42 (ii) A public officer justified in using force in the perfor-
43 mance of his duties or a person justified in using force in his
44 assistance or a person justified in using force in making an
45 arrest or preventing an escape is not obliged to desist from
46 efforts to perform such duty, effect such arrest or prevent
47 such escape because of resistance or threatened resistance by
48 or on behalf of the person against whom such action is directed.

49 (3) Except as required by paragraphs (1) and (2) of this sub-
50 section, a person employing protective force may estimate the
51 necessity of using force when the force is used, without retreating,
52 surrendering possession, doing any other act which he has no legal
53 duty to do or abstaining from any lawful action.

54 *c. (1) Notwithstanding the provisions of N. J. S. 2C:3-5, N. J. S.*
55 *2C:3-9, of this section, the use of force or deadly force upon or*
56 *toward an intruder who is unlawfully in a dwelling is justifiable*
57 *when the actor reasonably believes that the force is immediately*
58 *necessary for the purpose of protecting himself or other persons*
59 *in the dwelling against the use of unlawful force by the intruder*
60 *on the present occasion.*

61 (2) A reasonable belief exists when the actor, to protect him-
62 self or a third person, was in his own dwelling at the time of the
63 offense or was privileged to be thereon, and:

64 (a) The encounter between the actor and intruder was sudden
65 and unexpected, compelling the actor to act instantly; or

66 (b) *The actor reasonably believed that the intruder would inflict*
 67 *personal injury upon the actor or others in the dwelling; or*

68 (c) *The actor demanded that the intruder disarm, surrender or*
 69 *withdraw, and the intruder refused to do so.*

70 (3) *An actor employing protective force may estimate the neces-*
 71 *sity of using force when the force is used, without retreating, sur-*
 72 *rendering possession, withdrawing or doing any other act which*
 73 *he has no legal duty to do or abstaining from any lawful action.*

1 2. N. J. S. 2C:3-6 is amended to read as follows:

2 2C:3-6. Use of Force in Defense of Premises or Personal
 3 Property. a. Use of force in defense of premises. Subject to the
 4 provisions of this section and of section 2C:3-9, the use of force
 5 upon or toward the person of another is justifiable when the actor
 6 is in possession or control of premises or is licensed or privileged
 7 to be thereon and he reasonably believes such force necessary to
 8 prevent or terminate what he reasonably believes to be the com-
 9 mission or attempted commission of a criminal trespass by such
 10 other person in or upon such premises.

11 b. Limitations on justifiable use of force in defense of premises.

12 (1) Request to desist. The use of force is justifiable under this
 13 section only if the actor first requests the person against whom
 14 such force is used to desist from his interference with the property.
 15 unless the actor reasonably believes that:

16 (a) Such request would be useless;

17 (b) It would be dangerous to himself or another person to make
 18 the request; or

19 (c) Substantial harm will be done to the physical condition of
 20 the property which is sought to be protected before the request can
 21 effectively be made.

22 (2) Exclusion of trespasser. The use of force is not justifiable
 23 under this section if the actor knows that the exclusion of the
 24 trespasser will expose him to substantial danger of serious bodily
 25 harm.

26 (3) Use of deadly force. The use of deadly force is not justifiable
 27 under subsection a. of this section unless the actor reasonably
 28 believes that:

29 (a) The person against whom the force is used is attempting to
 30 dispossess him of his dwelling otherwise than under a claim of
 31 right to its possession; or

32 (b) The person against whom the force is used is attempting to
 33 commit or consummate arson, burglary, robbery or other criminal
 34 theft or property destruction; except that

35 (c) Deadly force does not become justifiable under subsections

36 (a) and (b) of this subsection unless *the actor reasonably believes*
37 *that:*

38 (i) The person against whom it is employed has employed
39 or threatened deadly force against or in the presence of the
40 actor; or

41 (ii) The use of force other than deadly force to *terminate*
42 *or prevent the commission or the consummation of the crime*
43 *would expose the actor or another in his presence to substan-*
44 *tial danger of [serious] bodily harm. An actor within a dwell-*
45 *ing shall be presumed to have a reasonable belief in the exis-*
46 *tence of the danger. The State must rebut this presumption*
47 *by proof beyond a reasonable doubt.*

48 c. Use of force in defense of personal property. Subject to the
49 provisions of subsection d. of this section and of section 2C:3-9,
50 the use of force upon or toward the person of another is justifiable
51 when the actor reasonably believes it necessary to prevent what he
52 reasonably believes to be an attempt by such other person to commit
53 theft, criminal mischief or other criminal interference with personal
54 property in his possession or in the possession of another for whose
55 protection he acts.

56 d. Limitations on justifiable use of force in defense of personal
57 property.

58 (1) Request to desist and exclusion of trespasser. The limita-
59 tions of subsection b. (1) and (2) of this section apply to subsec-
60 tion c. of this section.

61 (2) Use of deadly force. The use of deadly force in defense of
62 personal property is not justified unless justified under another
63 provision of this chapter.

1 3. N. J. S. 2C:3-11 is amended to read as follows:

2 2C:3-11. Definitions. In this chapter, unless a different mean-
3 ing plainly is required: a. "Unlawful force" means force, including
4 confinement, which is employed without the consent of the person
5 against whom it is directed and the employment of which consti-
6 tutes an offense or actionable tort or would constitute such offense
7 or tort except for a defense (such as the absence of intent, negli-
8 gence, or mental capacity; duress, youth, or diplomatic status)
9 not amounting to a privilege to use the force. Assent constitutes
10 consent, within the meaning of this section, whether or not it other-
11 wise is legally effective, except assent to the infliction of death or
12 serious bodily harm.

13 b. "Deadly force" means force which the actor uses with the
14 purpose of causing or which he knows to create a substantial risk

15 of causing death or serious bodily harm. Purposely firing a fire-
16 arm in the direction of another person or at a vehicle, building or
17 structure in which another person is believed to be constitutes
18 deadly force. A threat to cause death or serious bodily harm, by the
19 production of a weapon or otherwise, so long as the actor's purpose
20 is limited to creating an apprehension that he will use deadly force
21 if necessary, does not constitute deadly force.

22 c. "Dwelling" means any building or structure, though movable
23 or temporary, or a portion thereof, which is for the time being the
24 actor's home or place of lodging except that, as used in 2C:3-7, the
25 building or structure need not be the actor's own home or place of
26 lodging.

27 d. "Serious bodily harm" means bodily harm which creates a
28 substantial risk of death or which causes serious, permanent dis-
29 figurement or protracted loss or impairment of the function of any
30 bodily member or organ or which results from aggravated sexual
31 assault or sexual assault.

32 e. "*Bodily harm*" means *physical pain, or temporary disfigure-*
33 *ment, or impairment of physical condition.*

1 4. This act shall take effect immediately.

CRIMES

Prescribes the justifiable use of deadly force under certain cir-
cumstances.

ASSEMBLY JUDICIARY COMMITTEE
STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 498, 323 and 297

STATE OF NEW JERSEY

DATED: FEBRUARY 27, 1986

The Assembly Judiciary Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 498, 323 and 297.

This committee substitute amends the Criminal Code to clarify the circumstances under which the use of force is justified in self-protection and in defense of one's premises or property.

The provisions of the bill justify the use of deadly force whenever the actor reasonably believes that the use of less force to terminate or prevent a crime would expose the actor or another to the danger of bodily harm. The bill also creates a presumption that the person had a reasonable belief in the existence of such danger. In order to rebut this presumption, the State would be required to present proof beyond a reasonable doubt. According to present law, the burden of proving that such belief is reasonable falls upon the person who is accused of unjustifiable use of force.

Further, under current law "bodily harm" is not defined, therefore the bill amends N. J. S. 2C:3-11 to establish a definition.

SENATE JUDICIARY COMMITTEE
STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 498, 323 and 297

STATE OF NEW JERSEY

DATED: OCTOBER 2, 1986

The Senate Judiciary Committee reports favorably and with committee amendments Assembly Committee Substitute for Assembly Bill Nos. 498, 323 and 297.

This bill is aimed at clarifying sections of the criminal code dealing with the circumstances under which the use of force is justified in self-protection and in defense of premises or personal property.

With regard to self-protection, the bill provides that use of force or deadly force is justifiable against an intruder when the person reasonably believes that the force is immediately necessary to protect himself or another. As amended by the committee, the bill also provides that a reasonable belief for the need of force exists when an encounter between the person and an intruder in the person's dwelling is sudden and unexpected and either the person reasonably believes that the intruder would inflict personal injury on the person or another; or the intruder has refused to surrender or withdraw. Force can be used without a requirement that the person retreat or surrender possession of the dwelling.

With regard to the use of force in the protection of premises or personal property, the bill provides that the use of deadly force is justified when a person reasonably believes that the force is necessary to prevent or terminate the commission of a crime or the person against whom it is used has employed or threatened to employ deadly force. If a person uses deadly force within his own dwelling, the bill creates a presumption that the person's belief was reasonable. The prosecution could overcome this presumption only by proof beyond a reasonable doubt.

[SENATE REPRINT]
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 498, 323 and 297
STATE OF NEW JERSEY

ADOPTED FEBRUARY 27, 1986

Sponsored by Assemblymen SHUSTED, KERN and PATERNITI

AN ACT concerning the justifiable use of force and deadly force
under certain circumstances and amending N. J. S. 2C:3-4,
N. J. S. 2C:3-6 and N. J. S. 2C:3-11.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. N. J. S. 2C:3-4 is amended to read as follows:

2 2C:3-4. Use of Force in Self-Protection. a. Use of force justi-
3 fiable for protection of the person. Subject to the provisions of
4 this section and of section 2C:3-9, the use of force upon or toward
5 another person is justifiable when the actor reasonably believes
6 that such force is immediately necessary for the purpose of pro-
7 tecting himself against the use of unlawful force by such other
8 person on the present occasion.

9 b. Limitations on justifying necessity for use of force.

10 (1) The use of force is not justifiable under this section:

11 (a) To resist an arrest which the actor knows is being made by
12 a peace officer in the performance of his duties, although the arrest
13 is unlawful, unless the peace officer employs unlawful force to
14 effect such arrest; or

15 (b) To resist force used by the occupier or possessor of prop-
16 erty or by another person on his behalf, where the actor knows that
17 the person using the force is doing so under a claim of right to
18 protect the property, except that this limitation shall not apply if:

19 (i) The actor is a public officer acting in the performance
20 of his duties or a person lawfully assisting him therein or a
21 person making or assisting in a lawful arrest:

22 (ii) The actor has been unlawfully dispossessed of the

EXPLANATION—Matter enclosed in bold-faced bracket, [thus] in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted October 2, 1986.

23 property and is making a reentry or recaption justified by
24 section 2C:3-6; or

25 (iii) The actor reasonably believes that such force is neces-
26 sary to protect himself against death or serious bodily harm.

27 (2) The use of deadly force is not justifiable under this section
28 unless the actor reasonably believes that such force is necessary to
29 protect himself against death or serious bodily harm; nor is it
30 justifiable if:

31 (a) The actor, with the purpose of causing death or serious
32 bodily harm, provoked the use of force against himself in the same
33 encounter; or

34 (b) The actor knows that he can avoid the necessity of using such
35 force with complete safety by retreating or by surrendering pos-
36 session of a thing to a person asserting a claim of right thereto
37 or by complying with a demand that he abstain from any action
38 which he has no duty to take, except that:

39 (i) The actor is not obliged to retreat from his dwelling,
40 unless he was the initial aggressor or is assailed in his dwell-
41 ing by another person whose dwelling the actor knows it to be; and

42 (ii) A public officer justified in using force in the perfor-
43 mance of his duties or a person justified in using force in his
44 assistance or a person justified in using force in making an
45 arrest or preventing an escape is not obliged to desist from
46 efforts to perform such duty, effect such arrest or prevent
47 such escape because of resistance or threatened resistance by
48 or on behalf of the person against whom such action is directed.

49 (3) Except as required by paragraphs (1) and (2) of this sub-
50 section, a person employing protective force may estimate the
51 necessity of using force when the force is used, without retreating,
52 surrendering possession, doing any other act which he has no legal
53 duty to do or abstaining from any lawful action.

54 *c. (1) Notwithstanding the provisions of N. J. S. 2C:3-5, N. J. S.*
55 *2C:3-9, of this section, the use of force or deadly force upon or*
56 *toward an intruder who is unlawfully in a dwelling is justifiable*
57 *when the actor reasonably believes that the force is immediately*
58 *necessary for the purpose of protecting himself or other persons*
59 *in the dwelling against the use of unlawful force by the intruder*
60 *on the present occasion.*

61 *(2) A reasonable belief exists when the actor, to protect him-*
62 *self or a third person, was in his own dwelling at the time of the*
63 *offense or was privileged to be thereon*^{*}, and:

64 *(a) The*^{*} *and the*^{*} *encounter between the actor and intruder*

65 *was sudden and unexpected, compelling the actor to act in-*
 65A *stantly*~~;~~ or]* *and:**

66 **~~[(b)]~~* *(a)* The actor reasonably believed that the intruder*
 67 *would inflict personal injury upon the actor or others in the*
 67A *dwelling; or*

68 **~~[(c)]~~* *(b)* The actor demanded that the intruder disarm,*
 69 *surrender or withdraw, and the intruder refused to do so.*

70 *(3) An actor employing protective force may estimate the neces-*
 71 *sity of using force when the force is used, without retreating, sur-*
 72 *rendering possession, withdrawing or doing any other act which*
 73 *he has no legal duty to do or abstaining from any lawful action.*

1 2. N. J. S. 2C:3-6 is amended to read as follows:

2 2C:3-6. Use of Force in Defense of Premises or Personal
 3 Property. a. Use of force in defense of premises. Subject to the
 4 provisions of this section and of section 2C:3-9, the use of force
 5 upon or toward the person of another is justifiable when the actor
 6 is in possession or control of premises or is licensed or privileged
 7 to be thereon and he reasonably believes such force necessary to
 8 prevent or terminate what he reasonably believes to be the com-
 9 mission or attempted commission of a criminal trespass by such
 10 other person in or upon such premises.

11 b. Limitations on justifiable use of force in defense of premises.

12 (1) Request to desist. The use of force is justifiable under this
 13 section only if the actor first requests the person against whom
 14 such force is used to desist from his interference with the property,
 15 unless the actor reasonably believes that:

16 (a) Such request would be useless;

17 (b) It would be dangerous to himself or another person to make
 18 the request; or

19 (c) Substantial harm will be done to the physical condition of
 20 the property which is sought to be protected before the request can
 21 effectively be made.

22 (2) Exclusion of trespasser. The use of force is not justifiable
 23 under this section if the actor knows that the exclusion of the
 24 trespasser will expose him to substantial danger of serious bodily
 25 harm.

26 (3) Use of deadly force. The use of deadly force is not justifiable
 27 under subsection a. of this section unless the actor reasonably
 28 believes that:

29 (a) The person against whom the force is used is attempting to
 30 dispossess him of his dwelling otherwise than under a claim of
 31 right to its possession; or

32 (b) The person against whom the force is used is attempting to

33 commit or consummate arson, burglary, robbery or other criminal
34 theft or property destruction; except that

35 (c) Deadly force does not become justifiable under subsections
36 (a) and (b) of this subsection unless *the actor reasonably believes*
37 *that*:

38 (i) The person against whom it is employed has employed
39 or threatened deadly force against or in the presence of the
40 actor; or

41 (ii) The use of force other than deadly force to *terminate*
42 *or prevent the commission or the consummation of the crime*
43 *would expose the actor or another in his presence to substan-*
44 *tial danger of [serious] bodily harm. An actor within a dwell-*
45 *ing shall be presumed to have a reasonable belief in the exis-*
46 *tence of the danger. The State must rebut this presumption*
47 *by proof beyond a reasonable doubt.*

48 c. Use of force in defense of personal property. Subject to the
49 provisions of subsection d. of this section and of section 2C:3-9,
50 the use of force upon or toward the person of another is justifiable
51 when the actor reasonably believes it necessary to prevent what he
52 reasonably believes to be an attempt by such other person to commit
53 theft, criminal mischief or other criminal interference with personal
54 property in his possession or in the possession of another for whose
55 protection he acts.

56 d. Limitations on justifiable use of force in defense of personal
57 property.

58 (1) Request to desist and exclusion of trespasser. The limita-
59 tions of subsection b. (1) and (2) of this section apply to subsec-
60 tion c. of this section.

61 (2) Use of deadly force. The use of deadly force in defense of
62 personal property is not justified unless justified under another
63 provision of this chapter.

1 3. N. J. S. 2C:3-11 is amended to read as follows:

2 2C:3-11. Definitions. In this chapter, unless a different mean-
3 ing plainly is required: a. "Unlawful force" means force, including
4 confinement, which is employed without the consent of the person
5 against whom it is directed and the employment of which consti-
6 tutes an offense or actionable tort or would constitute such offense
7 or tort except for a defense (such as the absence of intent, negli-
8 gence, or mental capacity; duress, youth, or diplomatic status)
9 not amounting to a privilege to use the force. Assent constitutes
10 consent, within the meaning of this section, whether or not it other-
11 wise is legally effective, except assent to the infliction of death or
12 serious bodily harm.

13 b. "Deadly force" means force which the actor uses with the
14 purpose of causing or which he knows to create a substantial risk
15 of causing death or serious bodily harm. Purposely firing a fire-
16 arm in the direction of another person or at a vehicle, building or
17 structure in which another person is believed to be constitutes
18 deadly force. A threat to cause death or serious bodily harm, by the
19 production of a weapon or otherwise, so long as the actor's purpose
20 is limited to creating an apprehension that he will use deadly force
21 if necessary, does not constitute deadly force.

22 c. "Dwelling" means any building or structure, though movable
23 or temporary, or a portion thereof, which is for the time being the
24 actor's home or place or lodging except that, as used in 2C:3-7, the
25 building or structure need not be the actor's own home or place of
26 lodging.

27 d. "Serious bodily harm" means bodily harm which creates a
28 substantial risk of death or which causes serious, permanent dis-
29 figurement or protracted loss or impairment of the function of any
30 bodily member or organ or which results from aggravated sexual
31 assault or sexual assault.

32 e. "*Bodily harm*" means *physical pain, or temporary disfigure-*
33 *ment, or impairment of physical condition.*

1 4. This act shall take effect immediately.

CRIMES

Prescribes the justifiable use of deadly force under certain cir-
cumstances.



OFFICE OF THE GOVERNOR

NEWS RELEASE

CN-001

Contact: JOHN SAMERJAN
609-292-8956 OR 292-6000 EXT. 207

TRENTON, N.J. 08625
Release: MON., MAY 18, 1987

Governor Thomas H. Kean today signed legislation reducing the chance that an innocent homeowner, who uses deadly force against an unlawful intruder, would be charged with a criminal offense.

The legislation, A-498/323/297 sponsored by Assemblyman Thomas Shusted, R-Camden, and Senator Frank Graves, D-Passaic, makes several changes in the current law that allows for deadly force to be used by an individual if there is a reasonable belief that it is necessary to protect himself against death or serious bodily harm.

The new legislation allows for the use of force against an intruder when there is reasonable belief that the force is immediately necessary for the purpose of protecting himself or other persons against the use of unlawful force, regardless of its severity. Reasonable belief exists when the person involved is in their own dwelling, or another they are privileged to be in, and the encounter with the intruder is "sudden and expected," there is reasonable belief that the intruder would inflict personal injury, or the intruder was asked to disarm, surrender or withdraw and refused to do so.

The legislation is effective immediately.

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