

2B:22-9

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2001 **CHAPTER:** 381
NJSA: 2B:22-9 (Law enforcement—justification for use of force)
BILL NO: S2471 (Substituted for A3992)
SPONSOR(S): Girgenti
DATE INTRODUCED: June 28, 2001
COMMITTEE: **ASSEMBLY:** Judiciary
 SENATE: ----
AMENDED DURING PASSAGE: No
DATE OF PASSAGE: **ASSEMBLY:** January 7, 2002
 SENATE: December 6, 2001
DATE OF APPROVAL: January 8, 2002
FOLLOWING ARE ATTACHED IF AVAILABLE:
FINAL TEXT OF BILL (Original version of bill enacted)

S2471

SPONSORS STATEMENT: (Begins on page 3 of original bill) Yes
COMMITTEE STATEMENT: **ASSEMBLY:** Yes
 SENATE: Yes
FLOOR AMENDMENT STATEMENTS: No
LEGISLATIVE FISCAL ESTIMATE: No

A3992

SPONSORS STATEMENT: (Begins on page 3 of original bill) Yes
 (Bill and Sponsors Statement identical to S2471)
COMMITTEE STATEMENT: **ASSEMBLY:** Yes
 (Identical to Senate Statement to S2471)
 SENATE: No
FLOOR AMENDMENT STATEMENTS: No
LEGISLATIVE FISCAL ESTIMATE: No
VETO MESSAGE: No
GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No
HEARINGS: No
NEWSPAPER ARTICLES: No

SENATE, No. 2471

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED JUNE 28, 2001

Sponsored by:

Senator JOHN A. GIRGENTI

District 35 (Passaic)

Senator WILLIAM L. GORMLEY

District 2 (Atlantic)

Co-Sponsored by:

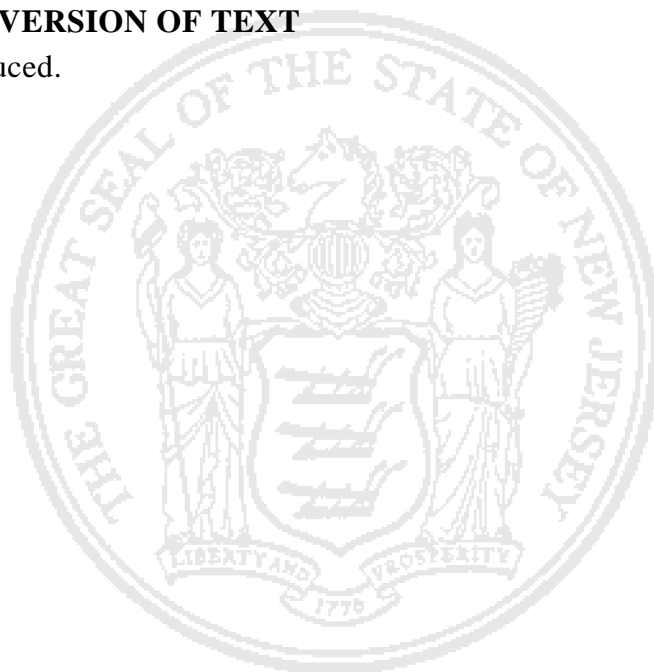
**Senators Furnari, Robertson, Martin, Turner, Lynch, O'Connor, Kosco,
Assemblymen Geist and Suliga**

SYNOPSIS

Requires prosecutor to instruct grand jury in the elements of justification in cases involving use of force by law enforcement officer.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/8/2002)

1 AN ACT concerning certain grand jury charges and supplementing
2 Title 2B of the New Jersey Statutes.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. a. In a grand jury proceeding where the use of force by a law
8 enforcement officer has been introduced as an issue, the prosecutor
9 shall instruct the grand jury in the elements of justification for the use
10 of force in law enforcement pursuant to N.J.S.2C:3-7 and N.J.S.2C:3-
11 9.

12 b. The prosecutor shall specifically charge the grand jury as
13 follows:

14 (1) Subject to the limitations set out below, the use of force upon
15 or toward the person of another is justifiable when a law enforcement
16 officer is making an arrest or assisting in making an arrest and the
17 officer reasonably believes that such force is immediately necessary to
18 effect a lawful arrest.

19 (2) The use of force is not justifiable unless:

20 (a) The officer makes known the purpose of the arrest or reasonably
21 believes that it is otherwise known by or cannot reasonably be made
22 known to the person to be arrested; and

23 (b) When the arrest is made under a warrant, the warrant is valid or
24 reasonably believed by the officer to be valid.

25 (3) The use of deadly force is not justifiable unless:

26 (a) The officer effecting the arrest is authorized to act as a law
27 enforcement officer; and

28 (b) The officer reasonably believes that the force employed creates
29 no substantial risk of injury to innocent persons; and

30 (c) The officer reasonably believes that the crime for which the
31 arrest is made was homicide, kidnapping, an offense under
32 N.J.S.2C:14-2 or N.J.S.2C:14-3, arson, robbery, burglary of a
33 dwelling, or an attempt to commit one of these crimes; and

34 (d) the officer reasonably believes:

35 (i) There is an imminent threat of deadly force to himself or to a
36 third party; or

37 (ii) The use of deadly force is necessary to thwart the commission
38 of a crime as set forth in subparagraph (c) of this paragraph; or

39 (iii) The use of deadly force is necessary to prevent an escape.

40 (4) The use of force to prevent the escape of an arrested person
41 from custody is justifiable when the force could have been employed
42 to effect the arrest under which the person is in custody under the
43 provisions of this act. A correction officer or other person authorized
44 to act as a law enforcement officer is, however, justified in using any
45 force including deadly force, which he reasonably believes to be
46 immediately necessary to prevent the escape of a person committed to

1 a jail, prison, or other institution for the detention of persons charged
2 with or convicted of an offense so long as the actor believes that the
3 force employed creates no substantial risk of injury to innocent
4 persons.

5 (5) The justification for the use of force afforded by this act is
6 unavailable when:

7 (a) The officer's belief in the unlawfulness of the force or conduct
8 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 (b) His error is due to ignorance or mistake as to the provisions of
12 the code, any other provisions of the criminal law or the law governing
13 the legality of an arrest or search.

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

19

20 2. This act shall take effect immediately.

21

22 STATEMENT

23

24 Current law, set out in N.J.S.2C:3-7, establishes the circumstances
25 under which a law enforcement officer is justified in using force,
26 including deadly force. However, in State v. Hogan, 336 N.J.Super.
27 319 (App. Div. 2001), the Appellate Division held that a prosecutor
28 presenting a case to a grand jury involving allegations of a law
29 enforcement officer's excessive use of force is not required to instruct
30 that grand jury in the principles of justification set out in N.J.S.2C:3-
31 7. The Appellate Division noted that, in contrast to the New Jersey
32 rule, the rule prevailing in the State of New York is that in cases
33 where the evidence supports a defense of justification, that defense
34 must be charged to the grand jury.

35 This bill would provide that, as in New York, in a grand jury
36 proceeding where the use of force by a law enforcement officer has
37 been introduced as an issue, the prosecutor would be required to
38 instruct the grand jury in the elements of justification for the use of
39 force in law enforcement.

40 The bill, which reiterates the provisions of N.J.S.A.2C:3-7 and
41 N.J.S.A.2C:3-9, provides that in these circumstances the prosecutor
42 must specifically inform the grand jury that the use of force is
43 justifiable when a law enforcement officer is making an arrest or
44 assisting in making an arrest and the officer reasonably believes that
45 such force is immediately necessary to effect a lawful arrest; that the
46 use of force is not justifiable unless the officer makes known the

1 purpose of the arrest or reasonably believes that it is otherwise known
2 by or cannot reasonably be made known to the person to be arrested;
3 and that when the arrest is made under a warrant, the warrant is valid
4 or reasonably believed by the officer to be valid. The bill provides that
5 the use of deadly force is not justifiable unless the person effecting the
6 arrest is authorized to act as a law enforcement officer; that he
7 reasonably believes that the force employed creates no substantial risk
8 of injury to innocent persons; and that he reasonably believes that the
9 crime for which the arrest is made was homicide, kidnapping, sexual
10 assault or other serious crime as enumerated in the statute; and the
11 officer reasonably believes: that there is an imminent threat of deadly
12 force to himself or to a third party, or the use of deadly force is
13 necessary to thwart the commission of one of the serious crimes listed,
14 or the use of deadly force is necessary to prevent an escape.

15 Pursuant to N.J.S.A.2C:3-9, the justification for the use of force
16 afforded by this act is unavailable when the officer's belief in the
17 unlawfulness of the force or conduct against which he employs
18 protective force or his belief in the lawfulness of an arrest which he
19 endeavors to effect by force is erroneous, and the error is due to
20 ignorance or mistake as to the provisions of law.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2471

STATE OF NEW JERSEY

DATED: AUGUST 3, 2001

The Senate Judiciary Committee reports favorably Senate Bill No. 2471.

Current law, set out in N.J.S.2C:3-7, establishes the circumstances under which a law enforcement officer is justified in using force, including deadly force. However, in State v. Hogan, 336 N.J.Super. 319 (App. Div. 2001), *cert.den.* 167 N.J. 635 (2001), the Appellate Division held that a prosecutor presenting a case to a grand jury involving allegations of a law enforcement officer's excessive use of force is not required to instruct that grand jury in the principles of justification set out in N.J.S.2C:3-7. The Appellate Division noted that, in contrast to the New Jersey law, the rule prevailing in New York is that in cases where the evidence supports a defense of justification, that defense must be charged to the grand jury. S-2471 would provide that, as in New York, in a grand jury proceeding where the use of force by a law enforcement officer has been introduced as an issue, the prosecutor would be required to instruct the grand jury in the elements of justification for the use of force in law enforcement.

ASSEMBLY, No. 3992

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED DECEMBER 6, 2001

Sponsored by:

**Assemblyman GEORGE F. GEIST
District 4 (Camden and Gloucester)**

Co-Sponsored by:

Assemblyman Suliga

SYNOPSIS

Requires prosecutor to instruct grand jury in the elements of justification in cases involving use of force by law enforcement officer.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/11/2001)

1 AN ACT concerning certain grand jury charges and supplementing
2 Title 2B of the New Jersey Statutes.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. a. In a grand jury proceeding where the use of force by a law
8 enforcement officer has been introduced as an issue, the prosecutor
9 shall instruct the grand jury in the elements of justification for the use
10 of force in law enforcement pursuant to N.J.S.2C:3-7 and N.J.S.2C:3-
11 9.

12 b. The prosecutor shall specifically charge the grand jury as
13 follows:

14 (1) Subject to the limitations set out below, the use of force upon
15 or toward the person of another is justifiable when a law enforcement
16 officer is making an arrest or assisting in making an arrest and the
17 officer reasonably believes that such force is immediately necessary to
18 effect a lawful arrest.

19 (2) The use of force is not justifiable unless:

20 (a) The officer makes known the purpose of the arrest or reasonably
21 believes that it is otherwise known by or cannot reasonably be made
22 known to the person to be arrested; and

23 (b) When the arrest is made under a warrant, the warrant is valid or
24 reasonably believed by the officer to be valid.

25 (3) The use of deadly force is not justifiable unless:

26 (a) The officer effecting the arrest is authorized to act as a law
27 enforcement officer; and

28 (b) The officer reasonably believes that the force employed creates
29 no substantial risk of injury to innocent persons; and

30 (c) The officer reasonably believes that the crime for which the
31 arrest is made was homicide, kidnapping, an offense under
32 N.J.S.2C:14-2 or N.J.S.2C:14-3, arson, robbery, burglary of a
33 dwelling, or an attempt to commit one of these crimes; and

34 (d) the officer reasonably believes:

35 (i) There is an imminent threat of deadly force to himself or to a
36 third party; or

37 (ii) The use of deadly force is necessary to thwart the commission
38 of a crime as set forth in subparagraph (c) of this paragraph; or

39 (iii) The use of deadly force is necessary to prevent an escape.

40 (4) The use of force to prevent the escape of an arrested person
41 from custody is justifiable when the force could have been employed
42 to effect the arrest under which the person is in custody under the
43 provisions of this act. A correction officer or other person authorized
44 to act as a law enforcement officer is, however, justified in using any
45 force including deadly force, which he reasonably believes to be
46 immediately necessary to prevent the escape of a person committed to

1 a jail, prison, or other institution for the detention of persons charged
2 with or convicted of an offense so long as the actor believes that the
3 force employed creates no substantial risk of injury to innocent
4 persons.

5 (5) The justification for the use of force afforded by this act is
6 unavailable when:

7 (a) The officer's belief in the unlawfulness of the force or conduct
8 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 (b) His error is due to ignorance or mistake as to the provisions of
12 the code, any other provisions of the criminal law or the law governing
13 the legality of an arrest or search.

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

19

20 2. This act shall take effect immediately.

21

22

23

STATEMENT

24

25 Current law, set out in N.J.S.2C:3-7, establishes the circumstances
26 under which a law enforcement officer is justified in using force,
27 including deadly force. However, in State v. Hogan, 336 N.J.Super.
28 319 (App. Div. 2001), the Appellate Division held that a prosecutor
29 presenting a case to a grand jury involving allegations of a law
30 enforcement officer's excessive use of force is not required to instruct
31 that grand jury in the principles of justification set out in N.J.S.2C:3-
32 7. The Appellate Division noted that, in contrast to the New Jersey
33 rule, the rule prevailing in the State of New York is that in cases
34 where the evidence supports a defense of justification, that defense
35 must be charged to the grand jury.

36 This bill would provide that, as in New York, in a grand jury
37 proceeding where the use of force by a law enforcement officer has
38 been introduced as an issue, the prosecutor would be required to
39 instruct the grand jury in the elements of justification for the use of
40 force in law enforcement.

41 The bill, which reiterates the provisions of N.J.S.A.2C:3-7 and
42 N.J.S.A.2C:3-9, provides that in these circumstances the prosecutor
43 must specifically inform the grand jury that the use of force is
44 justifiable when a law enforcement officer is making an arrest or
45 assisting in making an arrest and the officer reasonably believes that
46 such force is immediately necessary to effect a lawful arrest; that the

1 use of force is not justifiable unless the officer makes known the
2 purpose of the arrest or reasonably believes that it is otherwise known
3 by or cannot reasonably be made known to the person to be arrested;
4 and that when the arrest is made under a warrant, the warrant is valid
5 or reasonably believed by the officer to be valid. The bill provides that
6 the use of deadly force is not justifiable unless the person effecting the
7 arrest is authorized to act as a law enforcement officer; that he
8 reasonably believes that the force employed creates no substantial risk
9 of injury to innocent persons; and that he reasonably believes that the
10 crime for which the arrest is made was homicide, kidnapping, sexual
11 assault or other serious crime as enumerated in the statute; and the
12 officer reasonably believes: that there is an imminent threat of deadly
13 force to himself or to a third party, or the use of deadly force is
14 necessary to thwart the commission of one of the serious crimes listed,
15 or the use of deadly force is necessary to prevent an escape.

16 Pursuant to N.J.S.A.2C:3-9, the justification for the use of force
17 afforded by this act is unavailable when the officer's belief in the
18 unlawfulness of the force or conduct against which he employs
19 protective force or his belief in the lawfulness of an arrest which he
20 endeavors to effect by force is erroneous, and the error is due to
21 ignorance or mistake as to the provisions of law.

ASSEMBLY, No. 3992

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED DECEMBER 6, 2001

Sponsored by:

**Assemblyman GEORGE F. GEIST
District 4 (Camden and Gloucester)**

Co-Sponsored by:

Assemblyman Suliga

SYNOPSIS

Requires prosecutor to instruct grand jury in the elements of justification in cases involving use of force by law enforcement officer.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/11/2001)

1 AN ACT concerning certain grand jury charges and supplementing
2 Title 2B of the New Jersey Statutes.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. a. In a grand jury proceeding where the use of force by a law
8 enforcement officer has been introduced as an issue, the prosecutor
9 shall instruct the grand jury in the elements of justification for the use
10 of force in law enforcement pursuant to N.J.S.2C:3-7 and N.J.S.2C:3-
11 9.

12 b. The prosecutor shall specifically charge the grand jury as
13 follows:

14 (1) Subject to the limitations set out below, the use of force upon
15 or toward the person of another is justifiable when a law enforcement
16 officer is making an arrest or assisting in making an arrest and the
17 officer reasonably believes that such force is immediately necessary to
18 effect a lawful arrest.

19 (2) The use of force is not justifiable unless:

20 (a) The officer makes known the purpose of the arrest or reasonably
21 believes that it is otherwise known by or cannot reasonably be made
22 known to the person to be arrested; and

23 (b) When the arrest is made under a warrant, the warrant is valid or
24 reasonably believed by the officer to be valid.

25 (3) The use of deadly force is not justifiable unless:

26 (a) The officer effecting the arrest is authorized to act as a law
27 enforcement officer; and

28 (b) The officer reasonably believes that the force employed creates
29 no substantial risk of injury to innocent persons; and

30 (c) The officer reasonably believes that the crime for which the
31 arrest is made was homicide, kidnapping, an offense under
32 N.J.S.2C:14-2 or N.J.S.2C:14-3, arson, robbery, burglary of a
33 dwelling, or an attempt to commit one of these crimes; and

34 (d) the officer reasonably believes:

35 (i) There is an imminent threat of deadly force to himself or to a
36 third party; or

37 (ii) The use of deadly force is necessary to thwart the commission
38 of a crime as set forth in subparagraph (c) of this paragraph; or

39 (iii) The use of deadly force is necessary to prevent an escape.

40 (4) The use of force to prevent the escape of an arrested person
41 from custody is justifiable when the force could have been employed
42 to effect the arrest under which the person is in custody under the
43 provisions of this act. A correction officer or other person authorized
44 to act as a law enforcement officer is, however, justified in using any
45 force including deadly force, which he reasonably believes to be
46 immediately necessary to prevent the escape of a person committed to

1 a jail, prison, or other institution for the detention of persons charged
2 with or convicted of an offense so long as the actor believes that the
3 force employed creates no substantial risk of injury to innocent
4 persons.

5 (5) The justification for the use of force afforded by this act is
6 unavailable when:

7 (a) The officer's belief in the unlawfulness of the force or conduct
8 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 (b) His error is due to ignorance or mistake as to the provisions of
12 the code, any other provisions of the criminal law or the law governing
13 the legality of an arrest or search.

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

19

20 2. This act shall take effect immediately.

21

22

23

STATEMENT

24

25 Current law, set out in N.J.S.2C:3-7, establishes the circumstances
26 under which a law enforcement officer is justified in using force,
27 including deadly force. However, in State v. Hogan, 336 N.J.Super.
28 319 (App. Div. 2001), the Appellate Division held that a prosecutor
29 presenting a case to a grand jury involving allegations of a law
30 enforcement officer's excessive use of force is not required to instruct
31 that grand jury in the principles of justification set out in N.J.S.2C:3-
32 7. The Appellate Division noted that, in contrast to the New Jersey
33 rule, the rule prevailing in the State of New York is that in cases
34 where the evidence supports a defense of justification, that defense
35 must be charged to the grand jury.

36 This bill would provide that, as in New York, in a grand jury
37 proceeding where the use of force by a law enforcement officer has
38 been introduced as an issue, the prosecutor would be required to
39 instruct the grand jury in the elements of justification for the use of
40 force in law enforcement.

41 The bill, which reiterates the provisions of N.J.S.A.2C:3-7 and
42 N.J.S.A.2C:3-9, provides that in these circumstances the prosecutor
43 must specifically inform the grand jury that the use of force is
44 justifiable when a law enforcement officer is making an arrest or
45 assisting in making an arrest and the officer reasonably believes that
46 such force is immediately necessary to effect a lawful arrest; that the

1 use of force is not justifiable unless the officer makes known the
2 purpose of the arrest or reasonably believes that it is otherwise known
3 by or cannot reasonably be made known to the person to be arrested;
4 and that when the arrest is made under a warrant, the warrant is valid
5 or reasonably believed by the officer to be valid. The bill provides that
6 the use of deadly force is not justifiable unless the person effecting the
7 arrest is authorized to act as a law enforcement officer; that he
8 reasonably believes that the force employed creates no substantial risk
9 of injury to innocent persons; and that he reasonably believes that the
10 crime for which the arrest is made was homicide, kidnapping, sexual
11 assault or other serious crime as enumerated in the statute; and the
12 officer reasonably believes: that there is an imminent threat of deadly
13 force to himself or to a third party, or the use of deadly force is
14 necessary to thwart the commission of one of the serious crimes listed,
15 or the use of deadly force is necessary to prevent an escape.

16 Pursuant to N.J.S.A.2C:3-9, the justification for the use of force
17 afforded by this act is unavailable when the officer's belief in the
18 unlawfulness of the force or conduct against which he employs
19 protective force or his belief in the lawfulness of an arrest which he
20 endeavors to effect by force is erroneous, and the error is due to
21 ignorance or mistake as to the provisions of law.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3992

STATE OF NEW JERSEY

DATED: DECEMBER 13, 2001

The Assembly Judiciary Committee reports favorably Assembly Bill No. 3992.

Current law, set out in N.J.S.2C:3-7, establishes the circumstances under which a law enforcement officer is justified in using force, including deadly force. However, in State v. Hogan, 336 N.J.Super. 319 (App. Div. 2001), *cert.den.* 167 N.J. 635 (2001), the Appellate Division held that a prosecutor presenting a case to a grand jury involving allegations of a law enforcement officer's excessive use of force is not required to instruct that grand jury in the principles of justification set out in N.J.S.2C:3-7. The Appellate Division noted that, in contrast to the New Jersey law, the rule prevailing in New York is that in cases where the evidence supports a defense of justification, that defense must be charged to the grand jury. This bill would provide that, as in New York, in a grand jury proceeding where the use of force by a law enforcement officer has been introduced as an issue, the prosecutor would be required to instruct the grand jury in the elements of justification for the use of force in law enforcement.

This bill is identical to Senate, No. 2471.

P.L. 2001, CHAPTER 381, *approved January 8, 2002*

Senate, No. 2471

1 **AN ACT** concerning certain grand jury charges and supplementing
2 Title 2B of the New Jersey Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. a. In a grand jury proceeding where the use of force by a law
8 enforcement officer has been introduced as an issue, the prosecutor
9 shall instruct the grand jury in the elements of justification for the use
10 of force in law enforcement pursuant to N.J.S.2C:3-7 and N.J.S.2C:3-
11 9.

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13 follows:

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22 known to the person to be arrested; and

23 (b) When the arrest is made under a warrant, the warrant is valid or
24 reasonably believed by the officer to be valid.

25 (3) The use of deadly force is not justifiable unless:

26 (a) The officer effecting the arrest is authorized to act as a law
27 enforcement officer; and

28 (b) The officer reasonably believes that the force employed creates
29 no substantial risk of injury to innocent persons; and

30 (c) The officer reasonably believes that the crime for which the
31 arrest is made was homicide, kidnapping, an offense under
32 N.J.S.2C:14-2 or N.J.S.2C:14-3, arson, robbery, burglary of a
33 dwelling, or an attempt to commit one of these crimes; and

34 (d) the officer reasonably believes:

35 (i) There is an imminent threat of deadly force to himself or to a
36 third party; or

37 (ii) The use of deadly force is necessary to thwart the commission
38 of a crime as set forth in subparagraph (c) of this paragraph; or

39 (iii) The use of deadly force is necessary to prevent an escape.

40 (4) The use of force to prevent the escape of an arrested person
41 from custody is justifiable when the force could have been employed
42 to effect the arrest under which the person is in custody under the
43 provisions of this act. A correction officer or other person authorized
44 to act as a law enforcement officer is, however, justified in using any
45 force including deadly force, which he reasonably believes to be

1 immediately necessary to prevent the escape of a person committed to
2 a jail, prison, or other institution for the detention of persons charged
3 with or convicted of an offense so long as the actor believes that the
4 force employed creates no substantial risk of injury to innocent
5 persons.

6 (5) The justification for the use of force afforded by this act is
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8 (a) The officer's belief in the unlawfulness of the force or conduct
9 against which he employs protective force or his belief in the
10 lawfulness of an arrest which he endeavors to effect by force is
11 erroneous; and

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

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

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21 2. This act shall take effect immediately.

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STATEMENT

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26 Current law, set out in N.J.S.2C:3-7, establishes the circumstances
27 under which a law enforcement officer is justified in using force,
28 including deadly force. However, in State v. Hogan, 336 N.J.Super.
29 319 (App. Div. 2001), the Appellate Division held that a prosecutor
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31 enforcement officer's excessive use of force is not required to instruct
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33 7. The Appellate Division noted that, in contrast to the New Jersey
34 rule, the rule prevailing in the State of New York is that in cases
35 where the evidence supports a defense of justification, that defense
36 must be charged to the grand jury.

37 This bill would provide that, as in New York, in a grand jury
38 proceeding where the use of force by a law enforcement officer has
39 been introduced as an issue, the prosecutor would be required to
40 instruct the grand jury in the elements of justification for the use of
41 force in law enforcement.

42 The bill, which reiterates the provisions of N.J.S.A.2C:3-7 and
43 N.J.S.A.2C:3-9, provides that in these circumstances the prosecutor
44 must specifically inform the grand jury that the use of force is
45 justifiable when a law enforcement officer is making an arrest or
46 assisting in making an arrest and the officer reasonably believes that

1 such force is immediately necessary to effect a lawful arrest; that the
2 use of force is not justifiable unless the officer makes known the
3 purpose of the arrest or reasonably believes that it is otherwise known
4 by or cannot reasonably be made known to the person to be arrested;
5 and that when the arrest is made under a warrant, the warrant is valid
6 or reasonably believed by the officer to be valid. The bill provides that
7 the use of deadly force is not justifiable unless the person effecting the
8 arrest is authorized to act as a law enforcement officer; that he
9 reasonably believes that the force employed creates no substantial risk
10 of injury to innocent persons; and that he reasonably believes that the
11 crime for which the arrest is made was homicide, kidnapping, sexual
12 assault or other serious crime as enumerated in the statute; and the
13 officer reasonably believes: that there is an imminent threat of deadly
14 force to himself or to a third party, or the use of deadly force is
15 necessary to thwart the commission of one of the serious crimes listed,
16 or the use of deadly force is necessary to prevent an escape.

17 Pursuant to N.J.S.A.2C:3-9, the justification for the use of force
18 afforded by this act is unavailable when the officer's belief in the
19 unlawfulness of the force or conduct against which he employs
20 protective force or his belief in the lawfulness of an arrest which he
21 endeavors to effect by force is erroneous, and the error is due to
22 ignorance or mistake as to the provisions of law.

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27 Requires prosecutor to instruct grand jury in the elements of
28 justification in cases involving use of force by law enforcement officer.

CHAPTER 381

AN ACT concerning certain grand jury charges and supplementing Title 2B of the New Jersey Statutes.

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

C.2B:22-9 Grand jury instruction in elements of justification for use of force by law enforcement officer.

1. a. In a grand jury proceeding where the use of force by a law enforcement officer has been introduced as an issue, the prosecutor shall instruct the grand jury in the elements of justification for the use of force in law enforcement pursuant to N.J.S.2C:3-7 and N.J.S.2C:3-9.

b. The prosecutor shall specifically charge the grand jury as follows:

(1) Subject to the limitations set out below, the use of force upon or toward the person of another is justifiable when a law enforcement officer is making an arrest or assisting in making an arrest and the officer reasonably believes that such force is immediately necessary to effect a lawful arrest.

(2) The use of force is not justifiable unless:

(a) The officer makes known the purpose of the arrest or reasonably believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and

(b) When the arrest is made under a warrant, the warrant is valid or reasonably believed by the officer to be valid.

(3) The use of deadly force is not justifiable unless:

(a) The officer effecting the arrest is authorized to act as a law enforcement officer; and

(b) The officer reasonably believes that the force employed creates no substantial risk of injury to innocent persons; and

(c) The officer reasonably believes that the crime for which the arrest is made was homicide, kidnapping, an offense under N.J.S.2C:14-2 or N.J.S.2C:14-3, arson, robbery, burglary of a dwelling, or an attempt to commit one of these crimes; and

(d) the officer reasonably believes:

(i) There is an imminent threat of deadly force to himself or to a third party; or

(ii) The use of deadly force is necessary to thwart the commission of a crime as set forth in subparagraph (c) of this paragraph; or

(iii) The use of deadly force is necessary to prevent an escape.

(4) The use of force to prevent the escape of an arrested person from custody is justifiable when the force could have been employed to effect the arrest under which the person is in custody under the provisions of this act. A correction officer or other person authorized to act as a law enforcement officer is, however, justified in using any force including deadly force, which he reasonably believes to be immediately necessary to prevent the escape of a person committed to a jail, prison, or other institution for the detention of persons charged with or convicted of an offense so long as the actor believes that the force employed creates no substantial risk of injury to innocent persons.

(5) The justification for the use of force afforded by this act is unavailable when:

(a) The officer's belief in the unlawfulness of the force or conduct against which he employs protective force or his belief in the lawfulness of an arrest which he endeavors to effect by force is erroneous; and

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

c. When the officer is justified under N.J.S.2C:3-3 to 2C:3-8 in using force upon or toward the person of another but he recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those sections is unavailable in a prosecution for such recklessness or negligence towards innocent persons.

2. This act shall take effect immediately.

Approved January 8, 2002.