

LEGISLATIVE HISTORY CHECKLIST

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LAWS of 1999

CHAPTER: 73

NJSA: 2C:3-4

(Deadly force -- in domestic violence situations)

DATE OF PASSAGE:

BILL NO: S271 (Substituted for ACS for A259 and 781)

SPONSOR(S): Lipman and Codey

DATE INTRODUCED: January 13, 1998

COMMITTEE:

ASSEMBLY: Judiciary

SENATE: Judiciary

AMENDED DURING PASSAGE: Yes

ASSEMBLY: February 18, 1999

SENATE: May 18, 1999

DATE OF APPROVAL: April 30, 1999

THE FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: *Yes*^{1st} Reprint

(Amendments during passage denoted by superscript numbers)

S271

SPONSORS STATEMENT: *Yes* (Begins on page 4 of original bill)

COMMITTEE STATEMENT:

ASSEMBLY: *Yes*

SENATE: *Yes*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

ACS for A259 and A781

SPONSORS STATEMENT: *No*

COMMITTEE STATEMENT:

ASSEMBLY: *Yes*

(Identical to Senate Statement for S271)

SENATE: *No*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

ACS for A259 and A781 (last version): *Yes*

A259

SPONSORS STATEMENT: *Yes* (Begins on page 4 of original bill)

(Bill and Sponsor's statement identical to S271)

COMMITTEE STATEMENT:

ASSEMBLY: *No*

SENATE: *No*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

A781

SPONSORS STATEMENT: *Yes* (Begins on page 4 of original bill)

COMMITTEE STATEMENT:

ASSEMBLY: *No*

SENATE: *No*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

GOVERNOR'S ACTIONS

VETO MESSAGE: *No*

GOVERNOR'S PRESS RELEASE ON SIGNING: *Yes*

THE FOLLOWING WERE PRINTED:

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REPORTS: *No*

HEARINGS: *No*

NEWSPAPER ARTICLES: *No*

New Jersey Supreme Court Decision cited in various statements:

State v. Gartland, 149 N.J. 456 (1997)

P.L. 1999, CHAPTER 73, *approved April 30, 1999*
Senate, No. 271 (*First Reprint*)

1 **AN ACT** concerning the duty to retreat regarding the use of deadly
2 force and amending N.J.S.2C:3-4.

3

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

6

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

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

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

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

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

20 (b) To resist force used by the occupier or possessor of property
21 or by another person on his behalf, where the actor knows that the
22 person using the force is doing so under a claim of right to protect the
23 property, except that this limitation shall not apply if:

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

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

29 (iii) The actor reasonably believes that such force is necessary to
30 protect himself against death or serious bodily harm.

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

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

38 (b) The actor knows that he can avoid the necessity of using such
39 force with complete safety by retreating or by surrendering possession
40 of a thing to a person asserting a claim of right thereto or by

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SJU committee amendments adopted March 23, 1998.

1 complying with a demand that he abstain from any action which he has
2 no duty to take, except that:

3 (i) The actor is not obliged to retreat from his dwelling, unless he
4 was the initial aggressor ¹ or is assailed in his dwelling by another
5 person whose dwelling the actor knows it to be ~~except that the actor~~
6 who becomes the target of a unilateral unprovoked attack by a
7 cohabitant spouse or cohabitant household member with whom the
8 actor has a history of domestic violence is not obliged to retreat in the
9 shared dwelling ¹; and

10 (ii) A public officer justified in using force in the performance of
11 his duties or a person justified in using force in his assistance or a
12 person justified in using force in making an arrest or preventing an
13 escape is not obliged to desist from efforts to perform such duty,
14 effect such arrest or prevent such escape because of resistance or
15 threatened resistance by or on behalf of the person against whom such
16 action is directed.

17 (3) Except as required by paragraphs (1) and (2) of this subsection,
18 a person employing protective force may estimate the necessity of
19 using force when the force is used, without retreating, surrendering
20 possession, doing any other act which he has no legal duty to do or
21 abstaining from any lawful action.

22 c. (1) Notwithstanding the provisions of N.J.S.2C:3-5,
23 N.J.S.2C:3-9, or this section, the use of force or deadly force upon or
24 toward an intruder who is unlawfully in a dwelling is justifiable when
25 the actor reasonably believes that the force is immediately necessary
26 for the purpose of protecting himself or other persons in the dwelling
27 against the use of unlawful force by the intruder on the present
28 occasion.

29 (2) A reasonable belief exists when the actor, to protect himself or
30 a third person, was in his own dwelling at the time of the offense or
31 was privileged to be thereon and the encounter between the actor and
32 intruder was sudden and unexpected, compelling the actor to act
33 instantly and:

34 (a) The actor reasonably believed that the intruder would inflict
35 personal injury upon the actor or others in the dwelling; or

36 (b) The actor demanded that the intruder disarm, surrender or
37 withdraw, and the intruder refused to do so.

38 (3) An actor employing protective force may estimate the necessity
39 of using force when the force is used, without retreating, surrendering
40 possession, withdrawing or doing any other act which he has no legal
41 duty to do or abstaining from any lawful action.

42 (cf: P.L.1987, c.120, s.1)

43

44 2. This act shall take effect immediately.

1

2

3 Changes retreat doctrine regarding use of deadly force with respect to
4 victims of domestic violence assailed by cohabitant spouses or
5 cohabitant household members in a shared dwelling.

SENATE, No. 271

STATE OF NEW JERSEY
208th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

Sponsored by:

Senator WYNONA M. LIPMAN

District 29 (Essex and Union)

Senator RICHARD J. CODEY

District 27 (Essex)

SYNOPSIS

Changes retreat doctrine regarding use of deadly force with respect to victims of domestic violence assailed by cohabitant spouses or cohabitant household members in a shared dwelling.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning the duty to retreat regarding the use of deadly
2 force and amending N.J.S.2C:3-4.

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

6
7 1. N.J.S.2C:3-4 is amended to read as follows:

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

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

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

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

21 (b) To resist force used by the occupier or possessor of property
22 or by another person on his behalf, where the actor knows that the
23 person using the force is doing so under a claim of right to protect the
24 property, except that this limitation shall not apply if:

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

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

30 (iii) The actor reasonably believes that such force is necessary to
31 protect himself against death or serious bodily harm.

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

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

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

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

Matter underlined thus is new matter.

1 (i) The actor is not obliged to retreat from his dwelling, unless
2 he was the initial aggressor or is assailed in his dwelling by another
3 person whose dwelling the actor knows it to be except that the actor
4 who becomes the target of a unilateral unprovoked attack by a
5 cohabitant spouse or cohabitant household member with whom the
6 actor has a history of domestic violence is not obliged to retreat in the
7 shared dwelling ; and

8 (ii) A public officer justified in using force in the performance of
9 his duties or a person justified in using force in his assistance or a
10 person justified in using force in making an arrest or preventing an
11 escape is not obliged to desist from efforts to perform such duty,
12 effect such arrest or prevent such escape because of resistance or
13 threatened resistance by or on behalf of the person against whom such
14 action is directed.

15 (3) Except as required by paragraphs (1) and (2) of this subsection,
16 a person employing protective force may estimate the necessity of
17 using force when the force is used, without retreating, surrendering
18 possession, doing any other act which he has no legal duty to do or
19 abstaining from any lawful action.

20 c. (1) Notwithstanding the provisions of N.J.S.2C:3-5,
21 N.J.S.2C:3-9, or this section, the use of force or deadly force upon or
22 toward an intruder who is unlawfully in a dwelling is justifiable when
23 the actor reasonably believes that the force is immediately necessary
24 for the purpose of protecting himself or other persons in the dwelling
25 against the use of unlawful force by the intruder on the present
26 occasion.

27 (2) A reasonable belief exists when the actor, to protect himself or
28 a third person, was in his own dwelling at the time of the offense or
29 was privileged to be thereon and the encounter between the actor and
30 intruder was sudden and unexpected, compelling the actor to act
31 instantly and:

32 (a) The actor reasonably believed that the intruder would inflict
33 personal injury upon the actor or others in the dwelling; or

34 (b) The actor demanded that the intruder disarm, surrender or
35 withdraw, and the intruder refused to do so.

36 (3) An actor employing protective force may estimate the necessity
37 of using force when the force is used, without retreating, surrendering
38 possession, withdrawing or doing any other act which he has no legal
39 duty to do or abstaining from any lawful action.

40 (cf: P.L.1987, c.120, s.1)

41

42 2. This act shall take effect immediately.

STATEMENT

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This bill amends N.J.S.2C:3-4 regarding the justifiable use of deadly force to provide that a person who has been a victim of domestic violence who is attacked by a cohabitant spouse or cohabitant household member has no duty to retreat in the shared dwelling.

This bill is a response to the New Jersey Supreme Court's opinion in State v. Gartland (A-80, decided June 19,1997). The court noted in that decision that New Jersey is among the minority of jurisdictions that impose a duty to retreat on a woman attacked by her cohabitant spouse. This bill includes a cohabitant household member in addition to cohabitant spouse since the definition of "victim of domestic violence" in N.J.S.A.2C:25-19 includes household members.

This bill is not intended to change the New Jersey retreat doctrine regarding the use of deadly force with respect to others who occupy the same dwellings as co-owners, co-tenants and co-occupants. The bill is intended to address situations in which there has been a history of domestic violence between spouses or other household members.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 271

STATE OF NEW JERSEY

DATED: NOVEMBER 16, 1998

The Assembly Judiciary Committee reports favorably Senate Bill No. 271 (1R).

Under New Jersey's criminal code, the use of deadly force is justified if a person reasonably believes that such is necessary to protect against death or serious bodily injury. However, even if the use of deadly force is justified, a person has a duty to retreat only if the circumstances would permit the person to do so safely. An exception to this duty to retreat is provided if the attack takes place in the person's home. In that case, a person has a duty to retreat if the person instigated the altercation or if the person is assaulted by another person residing in the dwelling.

In State v. Gartland, 149 N.J. 456 (1997), the Supreme Court suggested that the Legislature review the application of the duty to retreat in the case of a spouse battered in the spouse's own home. (See Gartland, p. 470). In suggesting this review, the Court noted that New Jersey is among the minority of jurisdictions that impose a duty to retreat on a woman attacked by a cohabitant spouse. In response to the Gartland holding, the Senate bill as introduced, would have provided that a person who has been the victim of domestic violence who is attacked by a cohabitant spouse or cohabitant household member has no duty to retreat in the shared dwelling. As amended by the Senate Judiciary Committee, this bill now provides that the duty to retreat by a person attacked in the person's home would be eliminated in all cases except if the person instigated the altercation.

This bill is identical to the Assembly Committee Substitute for Assembly Bill Nos. 259 and 781.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 271

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 23, 1998

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 271.

Under New Jersey's criminal code, the use of deadly force is justified if a person reasonably believes that such is necessary to protect against death or serious bodily injury. However, even if the use of deadly force is justified, a person has a duty to retreat only if the circumstances would permit the person to do so safely. An exception to this duty to retreat is provided if the attack takes place in the person's home. In that case, a person has a duty to retreat if the person instigated the altercation or if the person is assaulted by another person residing in the dwelling.

In State v. Gartland, 149 N.J. 456 (1997), the Supreme Court suggested that the Legislature review the application of the duty to retreat in the case of a spouse battered in her own home. (See Gartland, p. 470). In suggesting this review, the Court noted that New Jersey is among the minority of jurisdictions that impose a duty to retreat on a woman attacked by a cohabitant spouse. In response to the Gartland holding, S-271, as introduced, would have provided that a person who has been the victim of domestic violence who is attacked by a cohabitant spouse or cohabitant household member has no duty to retreat in the shared dwelling. As amended by the committee, the duty to retreat by a person attacked in the person's home would be eliminated in all cases except if the person instigated the altercation.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 259/781**

STATE OF NEW JERSEY

DATED: NOVEMBER 16, 1998

The Assembly Judiciary Committee reports favorably a committee substitute for Assembly Bill Nos. 259 and 781.

Under New Jersey's criminal code, the use of deadly force is justified if a person reasonably believes that such is necessary to protect against death or serious bodily injury. However, even if the use of deadly force is justified, a person has a duty to retreat only if the circumstances would permit the person to do so safely. An exception to this duty to retreat is provided if the attack takes place in the person's home. In that case, a person has a duty to retreat if the person instigated the altercation or if the person is assaulted by another person residing in the dwelling.

In State v. Gartland, 149 N.J. 456 (1997), the Supreme Court suggested that the Legislature review the application of the duty to retreat in the case of a spouse battered in the spouse's own home. (See Gartland, p. 470). In suggesting this review, the Court noted that New Jersey is among the minority of jurisdictions that impose a duty to retreat on a woman attacked by a cohabitant spouse. In response to the Gartland holding, the committee substitute provides that the duty to retreat by a person attacked in the person's home would be eliminated in all cases except if the person instigated the altercation.

This committee substitute is identical to Senate Bill No. 271 (1R).

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 259 and 781

STATE OF NEW JERSEY
208th LEGISLATURE

ADOPTED NOVEMBER 16, 1998

Sponsored by:

Assemblyman GUY F. TALARICO

District 38 (Bergen)

Assemblywoman ROSE MARIE HECK

District 38 (Bergen)

Assemblywoman LORETTA WEINBERG

District 37 (Bergen)

Assemblyman NEIL M. COHEN

District 20 (Union)

Co-Sponsored by:

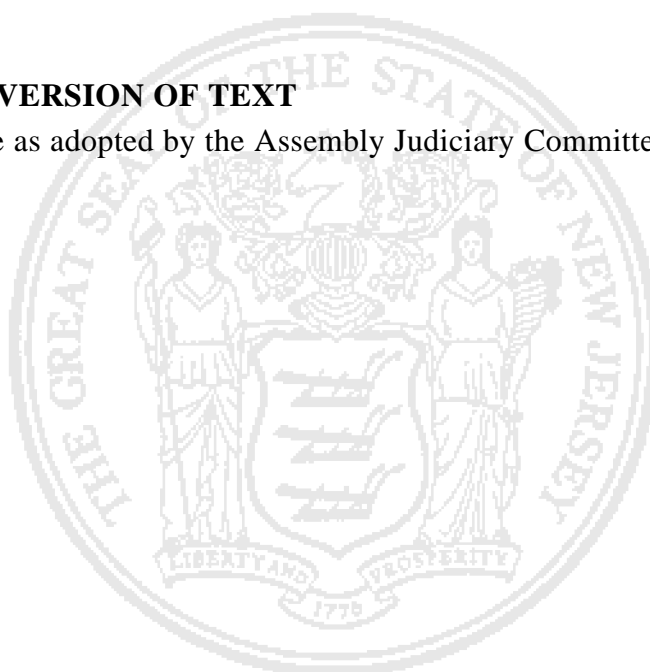
**Assemblyman Felice, Assemblywoman Friscia, Assemblyman Barnes,
Assemblywomen Buono, Gill, Assemblymen Holzapfel, LeFevre, Blee and
DiGaetano**

SYNOPSIS

Changes retreat doctrine regarding use of deadly force with respect to a dwelling.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Judiciary Committee.



(Sponsorship Updated As Of: 1/8/1999)

1 AN ACT concerning the duty to retreat regarding the use of deadly
2 force and amending N.J.S.2C:3-4.

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

6
7 1. N.J.S.2C:3-4 is amended to read as follows:

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

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

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

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

21 (b) To resist force used by the occupier or possessor of property
22 or by another person on his behalf, where the actor knows that the
23 person using the force is doing so under a claim of right to protect the
24 property, except that this limitation shall not apply if:

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

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

30 (iii) The actor reasonably believes that such force is necessary to
31 protect himself against death or serious bodily harm.

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

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

39 (b) The actor knows that he can avoid the necessity of using such
40 force with complete safety by retreating or by surrendering possession
41 of a thing to a person asserting a claim of right thereto or by
42 complying with a demand that he abstain from any action which he has
43 no duty to take, except 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 underlined thus is new matter.

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

4 (ii) A public officer justified in using force in the performance of
5 his duties or a person justified in using force in his assistance or a
6 person justified in using force in making an arrest or preventing an
7 escape is not obliged to desist from efforts to perform such duty,
8 effect such arrest or prevent such escape because of resistance or
9 threatened resistance by or on behalf of the person against whom such
10 action is directed.

11 (3) Except as required by paragraphs (1) and (2) of this
12 subsection, a person employing protective force may estimate the
13 necessity of using force when the force is used, without retreating,
14 surrendering possession, doing any other act which he has no legal
15 duty to do or abstaining from any lawful action.

16 c. (1) Notwithstanding the provisions of N.J.S.2C:3-5,
17 N.J.S.2C:3-9, or this section, the use of force or deadly force upon or
18 toward an intruder who is unlawfully in a dwelling is justifiable when
19 the actor reasonably believes that the force is immediately necessary
20 for the purpose of protecting himself or other persons in the dwelling
21 against the use of unlawful force by the intruder on the present
22 occasion.

23 (2) A reasonable belief exists when the actor, to protect himself
24 or a third person, was in his own dwelling at the time of the offense or
25 was privileged to be thereon and the encounter between the actor and
26 intruder was sudden and unexpected, compelling the actor to act
27 instantly and:

28 (a) The actor reasonably believed that the intruder would inflict
29 personal injury upon the actor or others in the dwelling; or

30 (b) The actor demanded that the intruder disarm, surrender or
31 withdraw, and the intruder refused to do so.

32 (3) An actor employing protective force may estimate the
33 necessity of using force when the force is used, without retreating,
34 surrendering possession, withdrawing or doing any other act which he
35 has no legal duty to do or abstaining from any lawful action.

36 (cf: P.L.1987, c.120, s.1)

37

38 2. This act shall take effect immediately.

ASSEMBLY, No. 259

STATE OF NEW JERSEY

208th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

Sponsored by:

Assemblyman GUY F. TALARICO

District 38 (Bergen)

Assemblywoman ROSE MARIE HECK

District 38 (Bergen)

Co-Sponsored by:

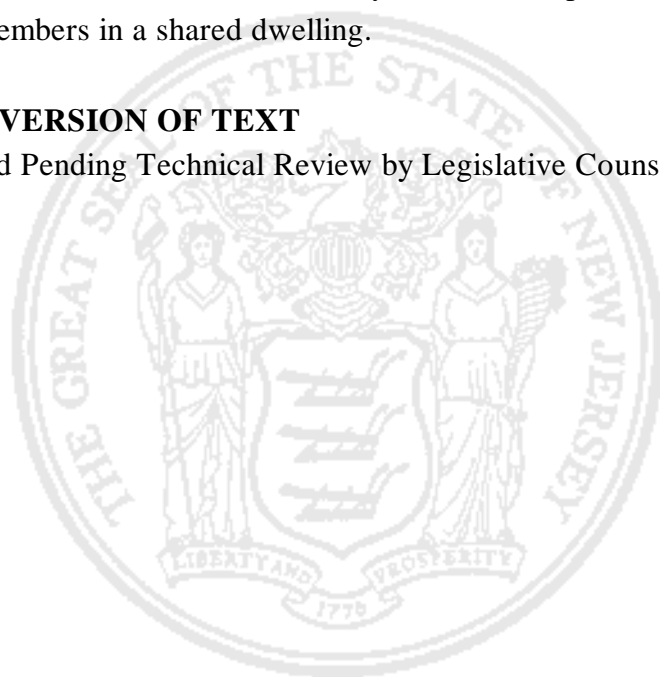
**Assemblyman Felice, Assemblywoman Friscia, Assemblyman Barnes and
Assemblywoman Buono**

SYNOPSIS

Changes retreat doctrine regarding use of deadly force with respect to victims of domestic violence assailed by cohabitant spouses or cohabitant household members in a shared dwelling.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 11/10/1998)

1 AN ACT concerning the duty to retreat regarding the use of deadly
2 force and amending N.J.S.2C:3-4.

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

6
7 1. N.J.S.2C:3-4 is amended to read as follows:

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

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

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

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

20 (b) To resist force used by the occupier or possessor of property
21 or by another person on his behalf, where the actor knows that the
22 person using the force is doing so under a claim of right to protect the
23 property, except that this limitation shall not apply if:

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

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

29 (iii) The actor reasonably believes that such force is necessary to
30 protect himself against death or serious bodily harm.

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

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

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

43 (i) The actor is not obliged to retreat from his dwelling, unless he

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

Matter underlined thus is new matter.

1 was the initial aggressor or is assailed in his dwelling by another
2 person whose dwelling the actor knows it to be except that the actor
3 who becomes the target of a unilateral unprovoked attack by a
4 cohabitant spouse or cohabitant household member with whom the
5 actor has a history of domestic violence is not obliged to retreat in the
6 shared dwelling ; and

7 (ii) A public officer justified in using force in the performance of
8 his duties or a person justified in using force in his assistance or a
9 person justified in using force in making an arrest or preventing an
10 escape is not obliged to desist from efforts to perform such duty,
11 effect such arrest or prevent such escape because of resistance or
12 threatened resistance by or on behalf of the person against whom such
13 action is directed.

14 (3) Except as required by paragraphs (1) and (2) of this subsection,
15 a person employing protective force may estimate the necessity of
16 using force when the force is used, without retreating, surrendering
17 possession, doing any other act which he has no legal duty to do or
18 abstaining from any lawful action.

19 c. (1) Notwithstanding the provisions of N.J.S.2C:3-5,
20 N.J.S.2C:3-9, or this section, the use of force or deadly force upon or
21 toward an intruder who is unlawfully in a dwelling is justifiable when
22 the actor reasonably believes that the force is immediately necessary
23 for the purpose of protecting himself or other persons in the dwelling
24 against the use of unlawful force by the intruder on the present
25 occasion.

26 (2) A reasonable belief exists when the actor, to protect himself or
27 a third person, was in his own dwelling at the time of the offense or
28 was privileged to be thereon and the encounter between the actor and
29 intruder was sudden and unexpected, compelling the actor to act
30 instantly and:

31 (a) The actor reasonably believed that the intruder would inflict
32 personal injury upon the actor or others in the dwelling; or

33 (b) The actor demanded that the intruder disarm, surrender or
34 withdraw, and the intruder refused to do so.

35 (3) An actor employing protective force may estimate the necessity
36 of using force when the force is used, without retreating, surrendering
37 possession, withdrawing or doing any other act which he has no legal
38 duty to do or abstaining from any lawful action.

39 (cf:P.L.1987, c.120, s.1)

40

41 2. This act shall take effect immediately.

STATEMENT

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This bill amends N.J.S.2C:3-4 regarding the justifiable use of deadly force to provide that a person who has been a victim of domestic violence who is attacked by a cohabitant spouse or cohabitant household member has no duty to retreat in the shared dwelling.

This bill is a response to the New Jersey Supreme Court's opinion in State v. Gartland (A-80, decided June 19,1997). The court noted in that decision that New Jersey is among the minority of jurisdictions that impose a duty to retreat on a woman attacked by her cohabitant spouse. This bill includes a cohabitant household member in addition to cohabitant spouse since the definition of "victim of domestic violence" in N.J.S.A.2C:25-19 includes household members.

This bill is not intended to change the New Jersey retreat doctrine regarding the use of deadly force with respect to others who occupy the same dwellings as co-owners, co-tenants and co-occupants. The bill is intended to address situations in which there has been a history of domestic violence between spouses or other household members.

ASSEMBLY, No. 781

STATE OF NEW JERSEY 208th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

Sponsored by:

Assemblywoman LORETTA WEINBERG

District 37 (Bergen)

Assemblyman NEIL M. COHEN

District 20 (Union)

Co-Sponsored by:

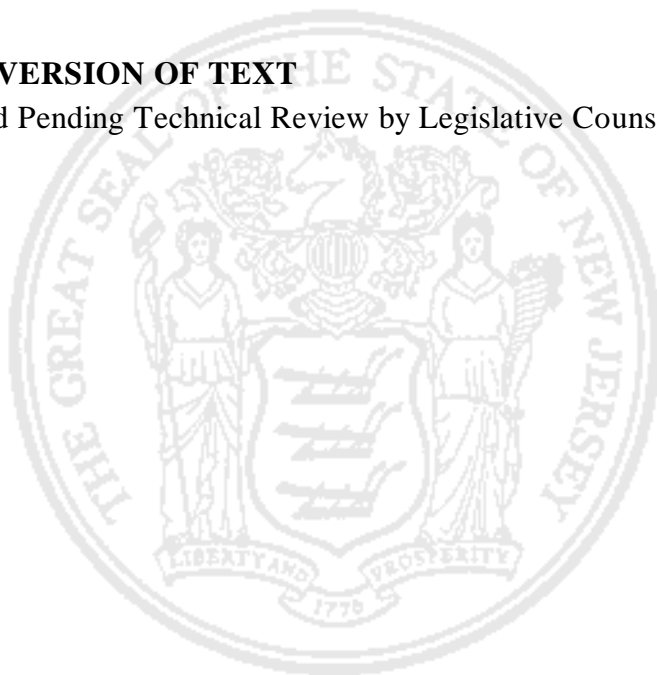
Assemblywoman Gill

SYNOPSIS

Changes retreat doctrine regarding use of deadly force with respect to victims of domestic violence assailed by cohabitant spouses or cohabitant household members in a shared dwelling.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 11/17/1998)

1 AN ACT concerning the duty to retreat regarding the use of deadly
2 force and amending N.J.S.2C:3-4.

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

6
7 1. N.J.S.2C:3-4 is amended to read as follows:

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

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

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

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

21 (b) To resist force used by the occupier or possessor of property
22 or by another person on his behalf, where the actor knows that the
23 person using the force is doing so under a claim of right to protect the
24 property, except that this limitation shall not apply if:

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

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

30 (iii) The actor reasonably believes that such force is necessary to
31 protect himself against death or serious bodily harm.

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

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

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

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

Matter underlined thus is new matter.

1 (i) The actor is not obliged to retreat from his dwelling, unless he
2 was the initial aggressor or is assailed in his dwelling by another
3 person whose dwelling the actor knows it to be except that the actor
4 who becomes the target of a unilateral unprovoked attack by a
5 cohabitant spouse or cohabitant household member with whom the
6 actor has a history of domestic violence is not obliged to retreat in the
7 shared dwelling ; and

8 (ii) A public officer justified in using force in the performance of
9 his duties or a person justified in using force in his assistance or a
10 person justified in using force in making an arrest or preventing an
11 escape is not obliged to desist from efforts to perform such duty,
12 effect such arrest or prevent such escape because of resistance or
13 threatened resistance by or on behalf of the person against whom such
14 action is directed.

15 (3) Except as required by paragraphs (1) and (2) of this subsection,
16 a person employing protective force may estimate the necessity of
17 using force when the force is used, without retreating, surrendering
18 possession, doing any other act which he has no legal duty to do or
19 abstaining from any lawful action.

20 c. (1) Notwithstanding the provisions of N.J.S.2C:3-5,
21 N.J.S.2C:3-9, or this section, the use of force or deadly force upon or
22 toward an intruder who is unlawfully in a dwelling is justifiable when
23 the actor reasonably believes that the force is immediately necessary
24 for the purpose of protecting himself or other persons in the dwelling
25 against the use of unlawful force by the intruder on the present
26 occasion.

27 (2) A reasonable belief exists when the actor, to protect himself or
28 a third person, was in his own dwelling at the time of the offense or
29 was privileged to be thereon and the encounter between the actor and
30 intruder was sudden and unexpected, compelling the actor to act
31 instantly and:

32 (a) The actor reasonably believed that the intruder would inflict
33 personal injury upon the actor or others in the dwelling; or

34 (b) The actor demanded that the intruder disarm, surrender or
35 withdraw, and the intruder refused to do so.

36 (3) An actor employing protective force may estimate the necessity
37 of using force when the force is used, without retreating, surrendering
38 possession, withdrawing or doing any other act which he has no legal
39 duty to do or abstaining from any lawful action.

40 (cf: P.L.1987, c.120, s.1)

41

42 2. This act shall take effect immediately.

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This bill amends N.J.S.2C:3-4 regarding the justifiable use of deadly force to provide that a person who has been a victim of domestic violence who is attacked by a cohabitant spouse or cohabitant household member has no duty to retreat in the shared dwelling.

This bill is a response to the New Jersey Supreme Court's opinion in State v. Gartland (A-80, decided June 19,1997). The court noted in that decision that New Jersey is among the minority of jurisdictions that impose a duty to retreat on a woman attacked by her cohabitant spouse. This bill includes a cohabitant household member in addition to cohabitant spouse since the definition of "victim of domestic violence" in N.J.S.A.2C:25-19 includes household members.

This bill is not intended to change the New Jersey retreat doctrine regarding the use of deadly force with respect to others who occupy the same dwellings as co-owners, co-tenants and co-occupants. The bill is intended to address situations in which there has been a history of domestic violence between spouses or other household members.

Office of the Governor
NEWS RELEASE

PO BOX 004
TRENTON, NJ 08625

CONTACT: Gene Herman
609-777-2600

RELEASE: April 30, 1999

Gov. Christie Whitman today signed the following pieces of legislation:

ACS for A-1209, sponsored by Assembly Members Joseph V. Doria, Jr. (D-Hudson) and Francis J. Blee (R-Atlantic), provides a supplemental appropriation to the Department of Military and Veterans' Affairs (MAVA) in the amount of \$50,000 for a pilot program to transport homebound veterans to and from Veterans Administration (VA) clinic sites and from the clinics to VA hospitals. The clinic sites are in Hackensack, Trenton, Fort Dix, Cape May, Elizabeth and Vineland.

A-505, sponsored by Assembly Member Gerald H. Zecker (R- Essex/Passaic), provides for parity among New Jersey depository institutions with respect to lending practices. The State Bank Parity Act of 1981 was intended to permit even competition among New Jersey lending institutions (banks, savings banks, savings and loan associations and credit unions) by permitting each lending institution to charge a rate of interest permitted to any other lending institution. Recent court decisions have construed the act to be limited only to the periodic percentage rate of interest charged on an outstanding balance. The bill provides that parity applies all other fees and charges such as, but not limited to, late charges and collection fees.

A-1277, sponsored by Assembly Members Alex DeCroce (R- Essex/Morris/Passaic) and Carol J. Murphy (R- Essex/Morris/Passaic), permits a board of education to use school facilities for child care services that are provided by either the board, a board approved sponsor, or a licensed child care program. The child care programs allowed under the bill will be available before or after regular school hours for any school age child who attends school within the school district. The bill supplements current law which permits school facilities to be used only for education purposes, library purposes, election purposes, the holding of social, recreational or civic meetings that are approved by the board or the holding of meetings or events where admission fees are charged, subject to the approval of the board.

A-1581, sponsored by Assembly Members Barbara Wright (R- Mercer/Middlesex), John C. Gibson (R-Cape May/Atlantic/Cumberland) and Joseph V. Doria, Jr. (D-Hudson) and Senators John O. Bennett (R-Monmouth) and Joseph F. Vitale (D-Middlesex), allows advanced practice nurses to order and prescribe controlled dangerous substances under limited circumstances to patients in end-of-life situations or with terminal illnesses. Under previous law, nurse practitioners had no authority to prescribe controlled dangerous

substances.

A-1396, sponsored by Assembly Members Steve Corodemus (R-Monmouth) and Tom Smith (R-Monmouth), repeals the \$2 per bushel surcharge on clams harvested through the depuration clam relay program in Monmouth County. Although the bill repeals the surcharge, it does not repeal the Monmouth County Clam Depuration and Relay Program Fund. The last two state budgets have included a \$150,000 appropriation to the fund.

S-271, sponsored by Senators Wynona M. Lipman (D-Essex/Union) and Richard J. Codey (D-Essex), and Assembly Members Guy F. Talarico (R-Bergen) and Rose Marie Heck (R-Bergen), changes the legal doctrine of retreat regarding the use of deadly force with respect to domestic violence committed by cohabitant spouses or cohabitant household members in a shared dwelling. The doctrine of retreat is part of the law of self-defense. In New Jersey, a person may use deadly force in self-defense if that force is necessary to protect against death or serious bodily injury. One of the exceptions to this rule is that a person cannot use deadly force if the use of such force can be safely avoided by retreating from the situation. The bill deletes the provision that a person must retreat from a cohabitant in the person's home.

S-534, sponsored by Senator Jack Sinagra (R-Middlesex) and Assembly Member Barbara Wright (R-Mercer/Middlesex), permanently designates the first Sunday in May as "Loyal Heart Award Day" in New Jersey in order to honor and provide public recognition to caregivers of persons with disabilities. The Loyal Heart Award was initiated in 1994 by Elayne Hyman Risley, chairwoman of the Middlesex County Chapter Coalition on Women and Disabilities, to recognize the contributions made by caregivers for persons with disabilities.

S-993, sponsored by Senators Robert E. Littell (R- Sussex/Hunterdon/Morris) and Peter A. Inverso (R-Mercer/Middlesex) and Assembly Members Leonard Lance (R-Warren/Hunterdon/Mercer) and Francis J. Blee (R-Atlantic), appropriates \$4,532,000 from the Jobs, Education and Competitiveness Fund to the Commission on Higher Education for construction projects at various county colleges. The bill allocates \$226,000 to Essex County College for the reconfiguration of instructional space of the gymnasium and appropriates \$306,000 to Essex County College for the improvement of the Martin Luther King Library. It also appropriates \$2 million to Hudson County College for the acquisition and renovation of the Culinary Arts Institute and \$1 million to Passaic County Community College for an addition to the academic facility.

S-1064, sponsored by Senators Andrew R. Ciesla (R-Monmouth/Ocean) and Diane B. Allen (R-Burlington/Camden) and Assembly Members Gerald H. Zecker (R-Essex/Passaic) and James W. Holzapfel (R- Monmouth/Ocean), exempts real estate licensees from the consumer fraud law under certain

circumstances. Under the bill, if a real estate licensee communicates any false, misleading or deceptive information provided to him by or on behalf of the seller of the real estate, but the real estate licensee had no actual knowledge and made a reasonable and diligent inquiry to determine the accuracy of the information, the exemption will apply. The real estate licensee can still be held liable for compensatory damages under the act and is not exempt for fraudulent actions made with an intent to deceive.

S-1369, sponsored by Senators John O. Bennett (R-Monmouth) and Joseph A. Palaia (R-Monmouth) and Assembly members Tom Smith (R- Monmouth), Steve Corodemus (R-Monmouth), John S. Wisniewski (D- Middlidesex) and James W. Holzapfel (R-Monmouth/Ocean), establishes the use of a firearm or imitation firearm against a law enforcement officer as a crime of the third degree. A third- degree crime is punishable by a three-to-five year term of imprisonment or a \$15,000 fine or both.

S-1372, sponsored by Senator James S. Cafiero (R-Cape May/Atlantic/Cumberland) and Assembly Members Nicholas Asselta (R- Cape May/Atlantic/Cumberland) and John C. Gibson (R-Cape May/Atlantic/Cumberland), authorizes the New Jersey Real Estate Commission to promulgate rules concerning the forms of monies that real estate brokers and their agents may hold as escrow agents or as temporary custodians of the funds in real estate transactions. Under previous law, real estate brokers could only accept monies in the form of cash or negotiable instruments, such as checks and money orders.

S-1461, sponsored by Senator Robert W. Singer (R-Burlington/Monmouth/Ocean) and Assembly Members Joseph R. Malone (R-Burlington/Monmouth/Ocean) and Melvin Cottrell (R-Burlington/Monmouth/Ocean), appropriates \$250,000 from the General Fund to the Department of Military and Veterans' Affairs for the Korean Veterans' Memorial Fund. The Fund was created in July, 1996 by legislation that also created the Korean Veterans' Memorial Committee. The Fund will be used to pay for the construction and maintenance of the memorial, which will be built in Atlantic City. It is anticipated that \$2 million will be needed to build and maintain the memorial.

S-1467, sponsored by Senator Raymond J. Zane (R-Cumberland/Gloucester/Salem) and Assembly Members Charles "Ken" Zisa (D-Bergen) and Michael Patrick Carroll (R-Morris), provides that writs of execution issued by the Special Civil Part of the Superior Court be valid for two years. Under previous law, writs of execution against personal property issued by the Special Civil Part of the Superior Court were valid for only one year.