

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1131

Short Title: Castle Doctrine for NC. (Public)

Sponsors: Representatives Hilton, Spear, Frye, McElraft (Primary Sponsors); Avila, Barnhart, Blust, Boles, Brown, Burr, Burris-Floyd, Cleveland, Current, Dollar, Folwell, Gillespie, Guice, Gulley, Holloway, Hurley, Langdon, McComas, McLawhorn, Mills, Moore, Sager, Samuelson, Setzer, Starnes, Stevens, Tillis, and Wiley.

Referred to: Judiciary I, if favorable, Ways and Means/Broadband Connectivity, if favorable, Appropriations.

April 7, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE WHEN THE USE OF FORCE OR THE USE OF DEADLY FORCE
3 IS JUSTIFIABLE IN DEFENSE OF SELF, OTHERS, OR ONE'S HOME OR VEHICLE,
4 OR IN PREVENTING THE COMMISSION OF A FORCIBLE FELONY, AND TO
5 PROVIDE IMMUNITY FROM CRIMINAL PROSECUTION AND CIVIL ACTION IN
6 THOSE CIRCUMSTANCES.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. Chapter 14 of the General Statutes is amended by adding a new
9 Article to read:

10 "Article 62.

11 "Justifiable Use of Force.

12 "§ 14-470. Definitions.

13 The following definitions apply in this Article:

- 14 (1) Criminal prosecution. – The term includes arresting, detaining in custody,
15 and charging or prosecuting the defendant.
- 16 (2) Deadly force. – Force that is likely to cause death or great bodily harm. The
17 term includes the following: (i) the firing of a firearm in the direction of the
18 person to be arrested, even though no intent exists to kill or inflict great
19 bodily harm; and (ii) the firing of a firearm at a vehicle in which the person
20 to be arrested is riding. The term does not include the discharge of a firearm
21 by a law enforcement officer or correctional officer during and within the
22 scope of his or her official duties which is loaded with a less-lethal munition.
- 23 (3) Dwelling. – A building or conveyance of any kind, including any attached
24 porch, whether the building or conveyance is temporary or permanent,
25 mobile or immobile, which has a roof over it, including a tent, and is
26 designed to be occupied by people lodging therein at night.
- 27 (4) Forcible felony. – Treason; murder; manslaughter; rape, sexual offense,
28 sexual battery; robbery; burglary; arson; kidnapping; aggravated assault;
29 felonious stalking; malicious use of explosive or incendiary device; and any
30 other felony which involves the use or threat of physical force or violence
31 against any individual.



- 1 (5) Law enforcement officer. – Any person employed or appointed as a
2 full-time, part-time, or auxiliary law enforcement officer, correctional
3 officer, probation officer, post-release supervision officer, or parole officer.
4 (6) Less-lethal munition. – A projectile that is designed to stun, temporarily
5 incapacitate, or cause temporary discomfort to a person without penetrating
6 the person's body.
7 (7) Residence. – A dwelling in which a person resides either temporarily or
8 permanently or is visiting as an invited guest.
9 (8) Vehicle. – A conveyance of any kind, whether or not motorized, which is
10 designed to transport people or property.

11 **"§ 14-471. Use of force in defense of person.**

12 A person is justified in using force, except deadly force, against another when and to the
13 extent that the person reasonably believes that the conduct is necessary to defend himself or
14 herself or another against the other's imminent use of unlawful force. However, a person is
15 justified in the use of deadly force and does not have a duty to retreat if:

- 16 (1) He or she reasonably believes that such force is necessary to prevent
17 imminent death or great bodily harm to himself or herself or another or to
18 prevent the imminent commission of a forcible felony; or
19 (2) Under those circumstances permitted pursuant to G.S. 14-472.

20 **"§ 14-472. Home protection; use of deadly force; presumption of fear of death or great**
21 **bodily harm.**

22 (a) A person is presumed to have held a reasonable fear of imminent peril of death or
23 great bodily harm to himself or herself or another when using defensive force that is intended
24 or likely to cause death or great bodily harm to another if:

- 25 (1) The person against whom the defensive force was used was in the process of
26 unlawfully and forcibly entering, or had unlawfully and forcibly entered, a
27 dwelling, residence, or occupied vehicle, or if that person had removed or
28 was attempting to remove another against that person's will from the
29 dwelling, residence, or occupied vehicle; and
30 (2) The person who uses defensive force knew or had reason to believe that an
31 unlawful and forcible entry or unlawful and forcible act was occurring or
32 had occurred.

33 (b) The presumption set forth in subsection (a) of this section does not apply if:

- 34 (1) The person against whom the defensive force is used has the right to be in or
35 is a lawful resident of the dwelling, residence, or vehicle, such as an owner,
36 lessee, or title holder, and there is not an injunction for protection from
37 domestic violence or a written pretrial supervision order of no contact
38 against that person; or
39 (2) The person sought to be removed is a child or grandchild, or is otherwise in
40 the lawful custody or under the lawful guardianship of the person against
41 whom the defensive force is used; or
42 (3) The person who uses defensive force is engaged in a forcible felony or is
43 using the dwelling, residence, or occupied vehicle to further a forcible
44 felony; or
45 (4) The person against whom the defensive force is used is a law enforcement
46 officer, as defined in G.S. 14-470, who enters or attempts to enter a
47 dwelling, residence, or vehicle in the lawful performance of his or her
48 official duties and the officer identified himself or herself in accordance with
49 any applicable law or the person using force knew or reasonably should have
50 known that the person entering or attempting to enter was a law enforcement
51 officer.

1 (c) A person who is not engaged in an unlawful activity and who is attacked in any
2 other place where he or she has a right to be has no duty to retreat and has the right to stand his
3 or her ground and meet force with force, including deadly force if he or she reasonably believes
4 it is necessary to do so to prevent death or great bodily harm to himself or herself or another or
5 to prevent the commission of a forcible felony.

6 (d) A person who unlawfully and by force enters or attempts to enter a person's
7 dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit
8 an unlawful act involving force or violence.

9 **"§ 14-473. Use of force in defense of others.**

10 A person is justified in the use of force, except deadly force, against another when and to
11 the extent that the person reasonably believes that the conduct is necessary to prevent or
12 terminate the other's trespass on, or other tortious or criminal interference with, either real
13 property other than a dwelling or personal property, lawfully in his or her possession or in the
14 possession of another who is a member of his or her immediate family or household or of a
15 person whose property he or she has a legal duty to protect. However, the person is justified in
16 the use of deadly force only if he or she reasonably believes that such force is necessary to
17 prevent the imminent commission of a forcible felony. A person does not have a duty to retreat
18 if the person is in a place where he or she has a right to be.

19 **"§ 14-474. Immunity from criminal prosecution and civil action for justifiable use of**
20 **force.**

21 (a) A person who uses force as permitted in G.S. 14-471, 14-472, or 14-473 is justified
22 in using such force and is immune from criminal prosecution and civil action for the use of
23 such force, unless the person against whom force was used is a law enforcement officer, as
24 defined in G.S. 14-470, who was acting in the performance of his or her official duties and the
25 officer identified himself or herself in accordance with any applicable law or the person using
26 force knew or reasonably should have known that the person was a law enforcement officer.

27 (b) A law enforcement agency may use standard procedures for investigating the use of
28 force as described in subsection (a) of this section, but the agency shall not arrest the person for
29 using force unless it determines that there is probable cause that the force that was used was
30 unlawful.

31 (c) The court shall award reasonable attorneys' fees, court costs, compensation for loss
32 of income, and all expenses incurred by the defendant in defense of any civil action brought by
33 a plaintiff if the court finds that the defendant is immune from prosecution as provided in
34 subsection (a) of this section.

35 **"§ 14-475. Use of force by aggressor.**

36 The justification described in G.S. 14-471, 14-472, and 14-473 is not available to a person
37 who:

- 38 (1) Is attempting to commit, committing, or escaping after the commission of, a
39 forcible felony, or
- 40 (2) Initially provokes the use of force against himself or herself unless one of
41 the following situations exists:
 - 42 a. The force is so great that the person reasonably believes that he or
43 she is in imminent danger of death or great bodily harm and that he
44 or she has exhausted every reasonable means to escape such danger
45 other than the use of force which is likely to cause death or great
46 bodily harm to the assailant.
 - 47 b. In good faith, the person withdraws from physical contact with the
48 assailant and indicates clearly to the assailant that he or she desires to
49 withdraw and terminate the use of force, but the assailant continues
50 or resumes the use of force.

1 "§ 14-476. Defense to civil action for damages; party convicted of forcible or attempted
2 forcible felony.

3 (a) It shall be a defense to any action for damages for personal injury or wrongful death,
4 or for injury to property, that such action arose from injury sustained by a participant during the
5 commission or attempted commission of a forcible felony. The defense authorized by this
6 section shall be established by evidence that the participant has been convicted of such forcible
7 felony or attempted forcible felony, or by proof of the commission of such crime or attempted
8 crime by a preponderance of the evidence.

9 (b) Any civil action in which the defense recognized by this section is raised shall be
10 stayed by the court on the motion of the civil defendant during the pendency of any criminal
11 action which forms the basis for the defense, unless the court finds that a conviction in the
12 criminal action would not form a valid defense under this section.

13 (c) In any civil action where a party prevails based on the defense created by this
14 section:

15 (1) The losing party, if convicted of and incarcerated for the crime or attempted
16 crime, shall, as determined by the court, lose any privileges provided by the
17 correctional facility, including, but not limited to:

- 18 a. Canteen purchases;
- 19 b. Telephone access;
- 20 c. Outdoor exercise;
- 21 d. Use of the library; and
- 22 e. Visitation.

23 (2) The court shall award a reasonable attorneys' fee to be paid to the prevailing
24 party in equal amounts by the losing party and the losing party's attorney;
25 however, the losing party's attorney is not personally responsible if he or she
26 has acted in good faith, based on the representations of his or her client. If
27 the losing party is incarcerated for the crime or attempted crime and has
28 insufficient assets to cover payment of the costs of the action and the award
29 of fees pursuant to this subdivision, the party shall, as determined by the
30 court, be required to pay by deduction from any payments the prisoner
31 receives while incarcerated.

32 (3) If the losing party is incarcerated for the crime or attempted crime, the court
33 shall issue a written order containing its findings and ruling pursuant to
34 subdivisions (1) and (2) of this subsection and shall direct that a certified
35 copy be forwarded to the appropriate correctional institution or facility.

36 (d) A law enforcement officer is not liable in any civil or criminal action arising out of
37 the use of any less-lethal munition in good faith during and within the scope of his or her
38 official duties."

39 **SECTION 2.** G.S. 14-51.1 is repealed.

40 **SECTION 3.** This act becomes effective December 1, 2009, and applies to
41 offenses committed on or after that date. Prosecutions for offenses committed before the
42 effective date of this act are not abated or affected by this act, and the statutes that would be
43 applicable but for this act remain applicable to those prosecutions.