

JAN 25 2006

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# A BILL FOR AN ACT

RELATING TO JUSTIFIABLE USE OF FORCE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 703-304, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§703-304 Use of force in self-protection.** (1) Subject  
4 to the provisions of this section and of section 703-308, the  
5 use of force upon or toward another person is justifiable when  
6 the actor believes that such force is immediately necessary for  
7 the purpose of protecting himself against the use of unlawful  
8 force by the other person on the present occasion.

9           (2) The use of deadly force is justifiable under this  
10 section if the actor believes that deadly force is necessary to  
11 protect himself against death, serious bodily injury,  
12 kidnapping, rape, or forcible sodomy.

13           (3) Except as otherwise provided in subsections (4) and  
14 (5) of this section, a person employing protective force may  
15 estimate the necessity thereof under the circumstances as he  
16 believes them to be when the force is used without retreating,  
17 surrendering possession, doing any other act which he has no  
18 legal duty to do, or abstaining from any lawful action.



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

3 (a) To resist an arrest which the actor knows is being  
4 made by a law enforcement officer, although the arrest  
5 is unlawful; or

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

11 (i) The actor is a public officer acting in the  
12 performance of his duties or a person lawfully  
13 assisting him therein or a person making or  
14 assisting in a lawful arrest; or

15 (ii) The actor believes that such force is necessary  
16 to protect himself against death or serious  
17 bodily injury.

18 (5) The use of deadly force is not justifiable under this  
19 section if[+]

20 ~~(a) The~~ the actor, with the intent of causing death or  
21 serious bodily injury, provoked the use of force against himself  
22 in the same encounter[~~;-of~~].

1           ~~[(b) The actor knows that he can avoid the necessity of~~  
2           ~~using such force with complete safety by retreating or~~  
3           ~~by surrendering possession of a thing to a person~~  
4           ~~asserting a claim of right thereto or by complying~~  
5           ~~with a demand that he abstain from any action which he~~  
6           ~~has no duty to take, except that:~~

7           ~~(i) The actor is not obliged to retreat from his~~  
8           ~~dwelling or place of work, unless he was the~~  
9           ~~initial aggressor or is assailed in his place of~~  
10           ~~work by another person whose place of work the~~  
11           ~~actor knows it to be; and~~

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



1           (6) The justification afforded by this section extends to  
 2 the use of confinement as protective force only if the actor  
 3 takes all reasonable measures to terminate the confinement as  
 4 soon as he knows that he safely can, unless the person confined  
 5 has been arrested on a charge of crime."

6           SECTION 2. Section 703-305, Hawaii Revised Statutes, is  
 7 amended to read as follows:

8           "**§703-305 Use of force for the protection of other**  
 9 **persons.** ~~(1)~~ Subject to the provisions of this section and of  
 10 section 703-310, the use of force upon or toward the person of  
 11 another is justifiable to protect a third person when:

12           ~~[(a)]~~ (1) Under the circumstances as the actor believes  
 13           them to be, the person whom the actor seeks to protect  
 14           would be justified in using such protective force; and

15           ~~[(b)]~~ (2) The actor believes that the actor's intervention  
 16           is necessary for the protection of the other person.

17           ~~(2) Notwithstanding subsection (1):~~

18           ~~(a) When the actor would be obliged under section 703-304~~  
 19           ~~to retreat, to surrender the possession of a thing, or~~  
 20           ~~to comply with a demand before using force in self-~~  
 21           ~~protection, the actor is not obliged to do so before~~  
 22           ~~using force for the protection of another person,~~



1           ~~unless the actor knows that the actor can thereby~~  
2           ~~secure the complete safety of such other person; and~~  
3       ~~(b) When the person whom the actor seeks to protect would~~  
4           ~~be obliged under section 703-304 to retreat, to~~  
5           ~~surrender the possession of a thing or to comply with~~  
6           ~~a demand if the person knew that the person could~~  
7           ~~obtain complete safety by so doing, the actor is~~  
8           ~~obliged to try to cause the person to do so before~~  
9           ~~using force in the person's protection if the actor~~  
10          ~~knows that the actor can obtain the other's complete~~  
11          ~~safety in that way; and~~  
12       ~~(c) Neither the actor nor the person whom the actor seeks~~  
13          ~~to protect is obliged to retreat when in the other's~~  
14          ~~dwelling or place of work to any greater extent than~~  
15          ~~in the actor's or the person's own.]"~~

16           SECTION 3. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18           SECTION 4. This Act does not affect rights and duties that  
19 matured, penalties that were incurred, and proceedings that were  
20 begun, before its effective date.

21           SECTION 5. This Act shall take effect upon its approval.

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S.B. NO. 2528

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# SB. NO. 2528

**Report Title:**

Justification; Use of force

**Description:**

Amends HRS chapter 703 to remove the requirement of retreating or surrendering possession of a thing before the use of force is a justifiable defense.

