

JAN 23 2009

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~~] the actor against the use of
8 unlawful 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~~] the actor against death, serious bodily
12 injury, 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 the person believes them to be when the force is used without
17 retreating, surrendering possession, doing any other act [~~which~~



1 he] that the person has no legal duty to do, or abstaining from
2 any lawful action.

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

5 (a) To resist an arrest [~~which~~] that the actor knows is
6 being made by a law enforcement officer, although the
7 arrest is unlawful; or

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

14 (i) The actor is a public officer acting in the
15 performance of [~~his~~] the duties of a public
16 officer or a person lawfully assisting [~~him~~] a
17 public officer therein or a person making or
18 assisting in a lawful arrest; or

19 (ii) The actor believes that such force is necessary
20 to protect [~~himself~~] the actor against death or
21 serious bodily injury.



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

3 (a) ~~The]~~ the actor, with the intent of causing death
4 or serious bodily injury, provoked the use of force
5 against [~~himself]~~ the actor in the same encounter[+~~or~~

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

12 ~~(i) The actor is not obliged to retreat from his~~
13 ~~dwelling or place of work, unless he was the~~
14 ~~initial aggressor or is assailed in his place of~~
15 ~~work by another person whose place of work the~~
16 ~~actor knows it to be; and~~

17 ~~(ii) A public officer justified in using force in the~~
18 ~~performance of his duties, or a person justified~~
19 ~~in using force in his assistance or a person~~
20 ~~justified in using force in making an arrest or~~
21 ~~preventing an escape, is not obliged to desist~~
22 ~~from efforts to perform his duty, effect the~~



1 ~~arrest, or prevent the escape because of~~
2 ~~resistance or threatened resistance by or on~~
3 ~~behalf of the person against whom the action is~~
4 ~~directed.~~

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

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

13 "**§703-305 Use of force for the protection of other**
14 **persons.** ~~[(1)]~~ Subject to the provisions of this section and
15 of section 703-310, the use of force upon or toward the person
16 of another is justifiable to protect a third person when:

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

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

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



- 1 ~~(a) When the actor would be obliged under section 703-304~~
2 ~~to retreat, to surrender the possession of a thing, or~~
3 ~~to comply with a demand before using force in self-~~
4 ~~protection, the actor is not obliged to do so before~~
5 ~~using force for the protection of another person,~~
6 ~~unless the actor knows that the actor can thereby~~
7 ~~secure the complete safety of such other person; and~~
- 8 ~~(b) When the person whom the actor seeks to protect would~~
9 ~~be obliged under section 703-304 to retreat, to~~
10 ~~surrender the possession of a thing or to comply with~~
11 ~~a demand if the person knew that the person could~~
12 ~~obtain complete safety by so doing, the actor is~~
13 ~~obliged to try to cause the person to do so before~~
14 ~~using force in the person's protection if the actor~~
15 ~~knows that the actor can obtain the other's complete~~
16 ~~safety in that way; and~~
- 17 ~~(c) Neither the actor nor the person whom the actor seeks~~
18 ~~to protect is obliged to retreat when in the other's~~
19 ~~dwelling or place of work to any greater extent than~~
20 ~~in the actor's or the person's own.] "~~

21 SECTION 3. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



1 SECTION 4. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before its effective date.

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

5

INTRODUCED BY:





Report Title:

Justifiable Use of Force

Description:

Amends chapter 703, HRS, to remove requirement to retreat or surrender possession of a thing before the use of force is considered justifiable.

