

JAN 23 2009

A BILL FOR AN ACT

RELATING TO 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~~]:

11 (a) The actor believes that deadly force is necessary to
12 protect [himself] the actor against death, serious
13 bodily injury, kidnapping, rape, or forcible
14 sodomy[-]; or

15 (b) The actor uses the deadly force in the actor's
16 dwelling against a person not lawfully present in the
17 actor's dwelling who uses force against the actor.



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

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

9 (a) To resist an arrest which the actor knows is being
10 made by a law enforcement officer, although the arrest
11 is unlawful; or

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

17 (i) The actor is a public officer acting in the
18 performance of his duties or a person lawfully
19 assisting him therein or a person making or
20 assisting in a lawful arrest; or



1 (ii) The actor believes that such force is necessary
2 to protect himself against death or serious
3 bodily injury.

4 (5) The use of deadly force is not justifiable under this
5 section if:

6 (a) The actor, with the intent of causing death or serious
7 bodily injury, provoked the use of force against
8 ~~[himself]~~ the actor in the same encounter; or

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

16 (i) The actor is not obliged to retreat from ~~[his]~~
17 the actor's dwelling, [or] place of work, or any
18 other place in which the actor may lawfully be
19 present unless ~~[he]~~ the actor was the initial
20 aggressor ~~[or is assailed in his place of work by~~
21 ~~another person whose place of work the actor~~
22 ~~knows it to be]; and~~



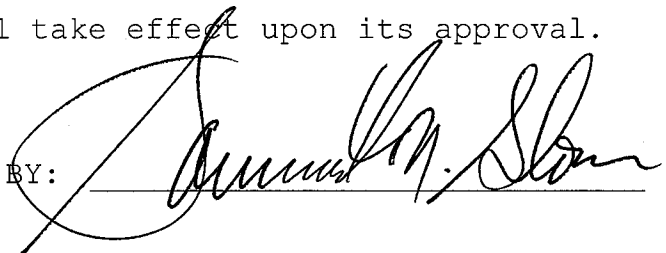
1 (ii) A public officer justified in using force in the
2 performance of [~~his~~] the officer's duties, or a
3 person justified in using force in [~~his~~] the
4 person's assistance or a person justified in
5 using force in making an arrest or preventing an
6 escape, is not obliged to desist from efforts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

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

16 SECTION 2. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 3. This Act shall take effect upon its approval.

19
INTRODUCED BY:





Report Title:

Self-Defense; Deadly Force; Duty to Retreat

Description:

Permits the use of deadly force by the resident of a dwelling against a person not lawfully in the dwelling who uses force against the resident. Expands the exemption from the duty to retreat from the home and workplace to any place where the actor may lawfully be present.

