

UPDATES (17April 12)

INTRODUCTION

The legislatures of several states made changes their state's self-defense laws in 2011 and early 2012. These include Arizona, Florida, Hawaii, Kansas, Missouri, Nevada, Oklahoma, New Hampshire, North Carolina, Pennsylvania, Utah, Wisconsin and Wyoming.

WARNING! These new statutes have not been tested in the courts of these states. The Courts don't always uphold what legislatures enact. You DON'T want to be THE "test case."

Corrections:

We have also made corrections for the states of Massachusetts and Texas. Although we had the right information in the Massachusetts chapter and retreat map, we inadvertently put the wrong information in the Deadly Force Comparison Chart. We have corrected that. Also, it appears Texas does have a civil immunity statute, but there is some conflicting language in the self-defense code which confuses the issue somewhat. We address that as well in these updates.

ARIZONA

In 2011, the following sections of Arizona's self-defense statutes were clarified and beefed up: 13-406 [Justification in general and defense of third persons], 13-411 [Use of force to prevent serious felonies], 13-419 [Defense of home and other special places] and 13-421 [Arizona's excellent Defensive Display statute].

§ 13-406. Justification; defense of a third person

A person is justified in threatening or using physical force or deadly physical force against another to protect a third person if, under the circumstances as a reasonable person would believe them to be, such person would be justified under § 13-404 or 13-405 in threatening or using physical force or deadly physical force to protect himself against the unlawful physical force or deadly physical force a reasonable person would believe is threatening the third person he seeks to protect. [The 2011 change eliminated the second paragraph of the former version of this statute that was probably redundant. The "reasonable person" standard still applies when defending a third person as we indicated in Arizona's subchapter.]

§ 13-411. Justification; use of force in crime prevention; applicability

A. A person is justified in threatening or using both physical force and deadly physical force against another if and to the extent the person reasonably believes that physical force or deadly

physical force is immediately necessary to prevent the other's commission of arson of an occupied structure under § 13-1704, burglary in the second or first degree under § 13-1507 or 13-1508, kidnapping under § 13-1304, manslaughter under § 13-1103, second or first degree murder under § 13-1104 or 13-1105, sexual conduct with a minor under § 13-1405, sexual assault under § 13-1406, child molestation under § 13-1410, armed robbery under § 13-1904 or aggravated assault under § 13-1204, subsection A, paragraphs 1 and 2.

B. There is no duty to retreat before threatening or using physical force or deadly physical force justified by subsection A of this section.

C. A person is presumed to be acting reasonably for the purposes of this section if the person is acting to prevent what the person reasonably believes is the imminent or actual commission of any of the offenses listed in subsection A of this section.

D. This section includes the use or threatened use of physical force or deadly physical force in a person's home, residence, place of business, land the person owns or leases, conveyance of any kind, or any other place in this state where a person has a right to be.

[The 2011 change simply made it clear that a reasonable belief that one of the serious felonies was being committed, even if it in fact wasn't, is enough to justify the use of deadly force. Otherwise, our analysis in Arizona's subchapter of *Self-Defense Laws of All 50 States* still applies.]

§ 13-419. Presumptions; defense of a residential structure or occupied vehicle; exceptions; definition

[This 2011 pumped up home-defense statute is patterned after Florida's dynamite defense-of-special-places statute. It's not quite as strong as Florida's. Florida leaves out the concept of "necessity" which legal scholars believe makes Florida's homes and occupied vehicles "death chambers" for intruders. Nevertheless, we express words of caution about this issue in Florida's subchapter, which we suggest you review before you light up an intruder in your home. Unlike Florida's defense-of-special-places statute, the phrase "immediately necessary" appears in Arizona's new law. Thus, you are much more likely to be burned for using excessive force in your home in Arizona than in Florida.

For the presumption of having acted reasonably to apply, the entry or presence of the intruder must be unlawful or forcible. There is no presumption against persons that have permission to be in the premises or vehicle, including co-owners, renters, roommates and family members. This is consistent with the Florida law. Although there is no presumption against such persons, if such persons threaten with force likely to cause death or serious injury, the homeowner or vehicle owner can respond with deadly force. However, force against such persons is carefully investigated, especially when a spouse is killed or seriously injured. See Chapter 13, Domestic Violence, in *Self-Defense Laws of All 50 States*.]

A. A person is presumed to reasonably believe that the threat or use of physical force or deadly force is immediately necessary for the purposes of §§ 13-404 through 13-408, § 13-418 and § 13-421 if the person knows or has reason to believe that the person against whom physical force or deadly force is threatened or used is unlawfully or forcefully entering or has unlawfully or forcefully entered and is present in the person's residential structure or occupied vehicle.

B. For the purposes of §§ 13-404 through 13-408, § 13-418 and § 13-421, a person who is unlawfully or forcefully entering or who has unlawfully or forcefully entered and is present in a residential structure or occupied vehicle is presumed to pose an imminent threat of unlawful deadly harm to any person who is in the residential structure or occupied vehicle.

C. The presumptions in subsections A and B of this section do not apply if:

1. The person against whom physical force or deadly physical force was threatened or used has the right to be in or is a lawful resident of the residential structure or occupied vehicle, including an owner, lessee, invitee or titleholder, and an order of protection or injunction against harassment has not been filed against that person.

2. The person against whom physical force or deadly physical force was threatened or used is the parent or grandparent, or has legal custody or guardianship, of a child or grandchild sought to be removed from the residential structure or occupied vehicle.

3. The person who threatens or uses physical force or deadly physical force is engaged in an unlawful activity or is using the residential structure or occupied vehicle to further an unlawful activity.

4. The person against whom physical force or deadly physical force was threatened or used is a law enforcement officer who enters or attempts to enter a residential structure or occupied vehicle in the performance of official duties.

D. For the purposes of this section:

1. "Residential structure" has the same meaning prescribed in § 13-1501.

2. "Vehicle" means a conveyance of any kind, whether or not motorized, that is designed to transport persons or property.

§ 13-421. Justification; defensive display of a firearm; definition

A. The defensive display of a firearm by a person against another is justified when and to the extent a reasonable person would believe that physical force is immediately necessary to protect

himself against the use or attempted use of unlawful physical force or deadly physical force.

B. This section does not apply to a person who:

1. Intentionally provokes another person to use or attempt to use unlawful physical force.
2. Uses a firearm during the commission of a serious offense as defined in § 13-706 or violent crime as defined in § 13-901.03.

C. This section does not require the defensive display of a firearm before the use of physical force or the threat of physical force by a person who is otherwise justified in the use or threatened use of physical force.

D. For the purposes of this section, “defensive display of a firearm” includes:

1. Verbally informing another person that the person possesses or has available a firearm.
2. Exposing or displaying a firearm in a manner that a reasonable person would understand was meant to protect the person against another's use or attempted use of unlawful physical force or deadly physical force.
3. Placing the person's hand on a firearm while the firearm is contained in a pocket, purse or other means of containment or transport.

[We think the language of this statute makes it clear that Arizona’s Legislature intended to allow citizens to threaten with weapons to prevent simple assaults where reasonably necessary. For example, a bad guy with no weapon threatens to beat up good guy with concealed weapon. Good guy draws gun and says “back off, varmint!” As we stated in Chapter 7, Thumbs Down Factors, good guys threatening with weapons are much more likely to be arrested and prosecuted when their assailants have no weapons. How Arizona’s courts will ultimately interpret this statute remains to be seen. At least now the good guy’s lawyer has a statute to hang his hat on. Try not to be the test case however, unless you believe paying lawyers large sums of money is your patriotic duty!]

CREDIT(S)

Added by Laws 2009, Ch. 183, § 1.

FLORIDA

[Although it is still illegal to open carry in Florida, its legislature recently amended the law to allow a brief and open display of the firearm without being in violation of the statute. However,

if the firearm is shown in an angry or threatening manner, not in necessary self-defense, this is punishable as a misdemeanor with a jail sentence of up to 60 days and fine up to \$500. The bottom line: You still cannot brandish a weapon in Florida without legal justification. See Florida Subchapter. This amendment was effective immediately when signed by the governor and filed with the Office of Secretary of State on 17 June 2011.]

790.053. Open carrying of weapons

(1) Except as otherwise provided by law and in subsection (2), it is unlawful for any person to openly carry on or about his or her person any firearm or electric weapon or device. It is not a violation of this section for a person licensed to carry a concealed firearm as provided in s. 790.06(1), and who is lawfully carrying a firearm in a concealed manner, to briefly and openly display the firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense.

(2) A person may openly carry, for purposes of lawful self-defense:

(a) A self-defense chemical spray.

(b) A nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.

(3) Any person violating this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 [60 days in jail] or s. 775.083 [\$500 fine].

HAWAII

Hawaii Revised Statutes § 663-1.57. Owner to felon; limited liability

[We congratulate Hawaii for making a move toward civil immunity after a justifiable act of self-defense. If a felon is injured after you justifiably pump his a\$\$ full of lead for breaking you're your home, he has to pay for his injuries, not you. But this is only IF YOUR USE OF FORCE IS FOUND TO BE JUSTIFIABLE in defending against the crimes listed below in this statute. Notice also that the intruder has to be charged AND convicted of at least a misdemeanor for this statute to protect you from civil liability. We suggest you FIRST worry about knowing when you are required to retreat and under what circumstances you may use force rather than worrying about being sued. THEN, if you are justified in your use of force, make sure your homeowner's insurance adjuster and attorney know about this statute.]

(a) An owner, including but not limited to a public entity, of any estate or any other interest in real property, whether possessory or nonpossessory, or any agent of the owner lawfully on the premises by consent of the owner, shall not be liable to any perpetrator engaged in any of the felonies set forth in subsection (b) for any injury or death to the perpetrator that occurs upon that property during the course of or after the commission of such felony, or when a reasonable person would believe that commission of a felony as set forth in subsection (b) is imminent; provided that if the perpetrator is injured, the perpetrator is charged with the criminal offense and convicted of the criminal offense or of a lesser included felony or misdemeanor.

(b) This section applies to the following felonies:

(1) Murder in the first or second degree;

- (2) Attempted murder in the first or second degree;
 - (3) Any class A felony as provided in the Hawaii Penal Code, including any attempt or conspiracy to commit a crime classified as a class A felony;
 - (4) Any class B felony involving violence or physical harm as provided in the Hawaii Penal Code;
 - (5) Any felony punishable by imprisonment for life;
 - (6) Any other felony in which the person inflicts serious bodily injury on another person; and
 - (7) Any felony in which the person personally used a firearm or a dangerous or deadly weapon.
- (c) The limitation on liability under this section arises:
- (1) At the moment the perpetrator commences the felony to which this section applies; or
 - (2) At the moment the owner or agent of the owner lawfully on the premises by consent of the owner believes that a commission of a felony under subsection (b) is imminent; and extends to the moment the perpetrator is no longer upon the property.
- (d) The limitation on liability under this section applies only when the perpetrator's conduct in furtherance of the commission of a felony specified in subsection (b) proximately or legally causes the injury or death.
- (e) This section does not limit the liability of an owner that otherwise exists for:
- (1) Wilful, wanton, or criminal conduct; or
 - (2) Wilful or malicious failure to guard or warn against a dangerous condition, use, or structure; or
 - (3) Injury or death caused to individuals other than the perpetrator of the felony.
- (f) Except with regard to paragraphs (e)(1) and (e)(3), the limitation of liability under this section shall not be affected by the failure of the owner to warn the perpetrator of the felony that the owner is armed and ready to cause bodily harm or death.
- (g) For purposes of this section, "owner" means the owner, the occupant, tenant, or anyone authorized to be on the property by the owner or the occupant, including a guest or a family or household member, employee, or agent of the owner lawfully on the premises.
- (h) The limitation on liability provided by this section shall be in addition to any other available defense.

CREDIT(S)

Laws 2010, ch. 97, § 1, eff. May 12, 2010.

H R S § 663-1.57, HI ST § 663-1.57

Current with amendments through 2010 Regular and Special Sessions.

KANSAS

[In late 2009 and early 2010, the Kansas Supreme Court handed down two cases that interpreted the state's self-defense statutes to say, in essence, that if a person shot or stabbed another he might be entitled to claim self-defense, but if he only threatened to shoot or stab, he couldn't.

These cases quickly came under strong criticism. Fortunately, the Kansas Legislature, in April of 2010 wisely amended Kansas' self-defense laws to include a defense for threats of force as well as the use of force. They did this by passing three new statutes and by repealing and replacing the existing self-defense statutes. We present these below somewhat out of statutory sequence to aid in understanding. We are grateful to Kansas attorney Richard Seaton of Manhattan, Kansas for bringing to our attention the new statute and the Kansas Office of Legislative Reference for guidance in finding the newly drafted statutes. We have analyzed only the changes. Please refer to the Kansas subchapter in Chapter 5 of our new book SELF-DEFENSE LAWS OF ALL 50 STATES for additional information.]

21-3220. Use of force; construction and application. The provisions of this act are to be construed and applied retroactively. [This means this new law can be applied to incidents that happened before the April 29, 2010 effective date. This is extremely important for anyone claiming self-defense and his or her attorney in currently pending Kansas cases.]
History: L. 2010, ch. 124, § 1; Apr. 29.

21-3221. Use of force; definitions. (a) As used in article 32 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto:

(1) "Use of force" means any or all of the following directed at or upon another person or thing: (A) Words or actions that reasonably convey the threat of force, including threats to cause death or great bodily harm to a person; (B) the presentation or display of the means of force; or (C) the application of physical force, including by a weapon or through the actions of another. [Threats of force now come within the protection of Kansas' self-defense laws as long as these threats are otherwise justifiable.]

(2) "Use of deadly force" means the application of any physical force described in paragraph (1) which is likely to cause death or great bodily harm to a person. Any threat to cause death or great bodily harm, including, but not limited to, by the display or production of a weapon, shall not constitute use of deadly force, so long as the actor's purpose is limited to creating an apprehension that the actor will, if necessary, use deadly force in defense of such actor or another or to affect a lawful arrest. [Paragraph 2 wisely distinguishes between a threat to use deadly force and the actual use of deadly force. You don't necessarily have to be facing an imminent threat of death or serious injury in order to be justified to use a threat of deadly force. **Careful:** It will take police and prosecutors a while to believe this change in the law and you don't want to end up their "test case."]

(b) An actor who threatens deadly force as described in subsection (a)(1) shall be subject to the determination in subsection (a) of K.S.A. 21-3211, and amendments thereto, and not to the determination in subsection (b) of K.S.A. 21-3211, and amendments thereto.

History: L. 2010, ch. 124, § 2; Apr. 29.

21-3211. Use of force in defense of a person; no duty to retreat.

[Non-Deadly Force]

(a) A person is justified in the use of force [including threats of force - see the new definitions in section 21-3221 above] against another when and to the extent it appears to such person and such person reasonably believes that such use of force is necessary to defend such person or a third person against such other's imminent use of unlawful force. **[Deadly Force]**

(b) A person is justified in the use of deadly force under circumstances described in subsection (a) if such person reasonably believes that such use of deadly force is necessary to prevent imminent death or great bodily harm to such person or a third person. **[No Duty to Retreat outside of Special Places]**

(c) Nothing in this section shall require a person to retreat if such person is using force to protect such person or a third person. **[But see section 21-3212 below; trespassers and those committing unlawful acts must retreat before using defensive force.]**

History: L. 1969, ch. 180, § 21-3211;L. 2006, ch. 194, § 3;L. 2010, ch. 124, § 4; Apr. 29.

[Defense of Persons in Special Places] [“Place of Work” is a new addition to “special places” entitled to special legal protection under Kansas self-defense law.]

21-3212. Use of force in defense of dwelling, place of work or occupied vehicle; no duty

to retreat. (a) A person is justified in the use of force against another when and to the extent that it appears to such person and such person reasonably believes that such use of force is necessary to prevent or terminate such other's unlawful entry into or attack upon such person's dwelling, place of work or occupied vehicle.

(b) A person is justified in the use of deadly force to prevent or terminate unlawful entry into or attack upon any dwelling, place of work or occupied vehicle if such person reasonably believes that such use of deadly force is necessary to prevent imminent death or great bodily harm to such person or another.

[No Duty to Retreat From Special Places]

(c) Nothing in this section shall require a person to retreat if such person is using force to protect such person's dwelling, place of work or occupied vehicle.

History: L. 1969, ch. 180, § 21-3212;L. 2006, ch. 194, § 4;L. 2010, ch. 124, § 5; Apr. 29.

21-3212a. Use of force; presumptions. (a) For the purposes of K.S.A. 21-3211 and 21-3212, and amendments thereto, a person is presumed to have a reasonable belief that deadly force is necessary to prevent imminent death or great bodily harm to such person or another person if:

(1) The person against whom the force is used, at the time the force is used:

(A) Is unlawfully or forcefully entering, or has unlawfully or forcefully entered, and is present within, the dwelling, place of work or occupied vehicle of the person using force; or

[The phrase “is present within” is troubling. Does this apply to those who are entering or to those who have entered? Utah specifically allows the use of deadly force against persons attempting entry, whether they have entered or not. The Utah language relieves homeowners of the worry of persons shot who fall outside of the home (No! You may not tamper with evidence by “dragging them inside” no matter where you live!) See all the cautions in our book against tampering with evidence or with witnesses.]

(B) has removed or is attempting to remove another person against such other person's will from the dwelling, place of work or occupied vehicle of the person using force; [e.g. kidnapping.] and

(2) the person using force knows or has reason to believe that any of the conditions set forth in paragraph (1) is occurring or has occurred. [Although not identical, this new section is patterned after Florida's very protective home defense statute. A few provisions seem even more protective than Florida's statute. For example, this Kansas statute includes a person's place of work as one of the “special places” wherein the presumption of reasonableness applies. Florida's statute does not specifically mention the workplace. Whereas Florida's statute requires an unlawful and forcible entry, Kansas allows a presumption for either an unlawful or forcible entry.]

[The exceptions below to the presumption of reasonableness are similar to Florida's. The presumption does not apply against co-tenants, co-workers, or legal co-occupants of a vehicle. This doesn't mean you can't defend yourself against such folks. It just means the presumption doesn't apply. You may still defend yourself using reasonable force against an imminent threat from such persons. Refer to our Florida sub-chapter to become aware of additional legal precautions.]

(b) The presumption set forth in subsection (a) does not apply if, at the time the force is used:

(1) The person against whom the force is used has a right to be in, or is a lawful resident of, the dwelling, place of work or occupied vehicle of the person using force, and is not subject to any order listed in K.S.A. 21-3843, and amendments thereto, that would prohibit such person's presence in the property;

(2) the person sought to be removed is a child, grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the force is used;

(3) the person using force is engaged in the commission of a crime, attempting to escape from a location where a crime has been committed, or is using the dwelling, place of work or occupied vehicle to further the commission of a crime; or

(4) the person against whom the force is used is a law enforcement officer who has entered or is attempting to enter a dwelling, place of work or occupied vehicle in the lawful performance of such officer's lawful duties, and the person using force knows or reasonably should know that the person who has entered or is attempting to enter is a law

enforcement officer.

History: L. 2010, ch. 124, § 3; Apr. 29

[Force in Defense of Property]

21-3213. Use of force in defense of property other than a dwelling, place of work or occupied vehicle. A person who is lawfully in possession of property other than a dwelling, place of work or occupied vehicle is justified in the use of force against another for the purpose of preventing or terminating an unlawful interference with such property. Only such use of force as a reasonable person would deem necessary to prevent or terminate the interference may intentionally be used. *[We caution our readers throughout our book not to use deadly force to recover personal property. This new statute doesn't change our counsel in this regard.]*

History: L. 1969, ch. 180, § 21-3213;L. 2010, ch. 124, § 6; Apr. 29.

[Exceptions to Justifiable Self-Defense]

21-3214. Use of force by an aggressor. The justification described in K.S.A. 21-3211, 21-3212 and 21-3213, and amendments thereto, is not available to a person who:

- (a) Is attempting to commit, committing, or escaping from the commission of a forcible felony; or
- (b) Initially provokes the use of any force against such person or another, with intent to use such force as an excuse to inflict bodily harm upon the assailant; or
- (c) Otherwise initially provokes the use of any force against such person or another, unless:
 - (1) Such person has reasonable grounds to believe that such person is in imminent danger of death or great bodily harm, and such person has exhausted every reasonable means to escape such danger other than the use of deadly force; or
 - (2) In good faith, such person withdraws from physical contact with the assailant and indicates clearly to the assailant that such person desires to withdraw and terminate the use of such force, but the assailant continues or resumes the use of such force.

History: L. 1969, ch. 180, § 21-3214;L. 2010, ch. 124, § 7; Apr. 29.

*[We omitted sections 21-3215-3217 as being beyond the scope of our book. We strongly counsel against making citizens' arrests, and emphasize that deadly force may only be used to prevent imminent death or serious bodily injury. **Example:** Shooting someone who exhibits a weapon after you use a weapon to make an arrest over the theft of a \$50 lawnmower is fraught with ugly legal and personal risk.]*

21-3218. No duty to retreat; exceptions. (a) A person who is not engaged in an unlawful activity and who is attacked in a place where such person has a right to be *[meaning he/she is not trespassing]* has no duty to retreat and has the right to stand such person's ground and use any force which such person would be justified in using under article 32 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

(b) This section shall be part of and supplemental to the Kansas criminal code.

History: L. 2006, ch. 194, § 1; L. 2010, ch. 124, § 11; Apr. 29.

[Please refer to our Kansas sub-chapter in SELF-DEFENSE LAWS OF ALL 50 STATES for additional precautions.]

MASSACHUSETTS - Correction - Retreat Rule -

Although it's clear in the Massachusetts subchapter (Chapter 5) and Retreat Map (Chapter 6) that one has a duty to retreat in Massachusetts when outside the home, we inadvertently indicated in the first column of the Deadly Force Comparison Chart (Chapter 6) that there was no duty to retreat before using deadly force outside of special places (e.g. your home). This is wrong. This column should have stated Ayes@ instead of Ano.@ Please also notice in the subchapter we warn that the duty to retreat extends to exterior stairs and porches.

MISSOURI

563.031. Use of force in defense of persons

[The 2011 amendments to Missouri's self-defense laws are underlined below. They added a defender's unborn child to the persons entitled to defense. They also expanded the special places entitled to "castle doctrine" protection to the borders of owned or leased property. A defender does not have a duty to retreat from such places unless the exceptions to self-defense apply as we explained in Missouri's subchapter. (Remember, the duty to retreat when not on owned or leased private property is confusing at best as we point out in Missouri's subchapter. Therefore, to be safe, we encourage retreat when it is safe to do so before using defensive force outside of these special places. We encourage you to re-read our cautionary notes in Missouri's subchapter.)

Finally, although a person claiming self-defense has the burden of raising the issue in any prosecution, once the issue is raised, the state has the burden of proving beyond a reasonable doubt that the defendant didn't have the legal right to use force under the circumstances.]

1. A person may, subject to the provisions of subsection 2 of this section, use physical force upon another person when and to the extent he or she reasonably believes such force to be necessary to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful force by such other person, unless:

(1) The actor was the initial aggressor; except that in such case his or her use of force is nevertheless justifiable provided:

(a) He or she has withdrawn from the encounter and effectively communicated such withdrawal

to such other person but the latter persists in continuing the incident by the use or threatened use of unlawful force; or

(b) He or she is a law enforcement officer and as such is an aggressor pursuant to section 563.046; or

(c) The aggressor is justified under some other provision of this chapter or other provision of law;

(2) Under the circumstances as the actor reasonably believes them to be, the person whom he or she seeks to protect would not be justified in using such protective force;

(3) The actor was attempting to commit, committing, or escaping after the commission of a forcible felony.

2. A person may not use deadly force upon another person under the circumstances specified in subsection 1 of this section unless:

(1) He or she reasonably believes that such deadly force is necessary to protect himself, or herself or her unborn child, or another against death, serious physical injury, or any forcible felony;

(2) Such force is used against a person who unlawfully enters, remains after unlawfully entering, or attempts to unlawfully enter a dwelling, residence, or vehicle lawfully occupied by such person; or

(3) Such force is used against a person who unlawfully enters, remains after unlawfully entering, or attempts to unlawfully enter private property that is owned or leased by an individual claiming a justification of using protective force under this section.

3. A person does not have a duty to retreat from a dwelling, residence, or vehicle where the person is not unlawfully entering or unlawfully remaining. A person does not have a duty to retreat from private property that is owned or leased by such individual.

4. The justification afforded by this section extends to the use of physical restraint as protective force provided that the actor takes all reasonable measures to terminate the restraint as soon as it is reasonable to do so.

5. The defendant shall have the burden of injecting the issue of justification under this section. If a defendant asserts that his or her use of force is described under subdivision (2) of subsection 2 of this section, the burden shall then be on the state to prove beyond a reasonable doubt that the defendant did not reasonably believe that the use of such force was necessary to defend against

what he or she reasonably believed was the use or imminent use of unlawful force.

NEVADA

[This 2011 amendment, underlined below, seems to simply codify what was already Nevada case law, that a defender does not have to retreat from any place where he has a legal right to be. The flip side to this rule is that trespassers must retreat. This statute goes into effect October 1, 2011.]

1. Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of habitation, property or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against any person or persons who manifestly intend and endeavor, in a violent, riotous, tumultuous or surreptitious manner, to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

2. A person is not required to retreat before using deadly force as provided in subsection 1 if the person:

- (a) Is not the original aggressor;
- (b) Has a right to be present at the location where deadly force is used; and
- (c) Is not actively engaged in conduct in furtherance of criminal activity at the time deadly force is used.

NEW HAMPSHIRE

[This bill, the essence of which did away with the need to retreat when a defender is where he or she has a legal right to be, was passed by New Hampshire's Legislature but vetoed by its misguided governor. Fortunately, both houses of the state legislature overrode the governor's veto and the bill will become law on November 14, 2011. We urge our readers living and traveling in New Hampshire not to become New Hampshire's test case.]

2011 SESSION

* * *

SENATE BILL 88

AN ACT relative to physical force in defense of a person, relative to producing or displaying a firearm or other means of self-defense, and relative to eliminating minimum sentencing and adding civil immunity for certain firearm use.

SPONSORS: Sen. Boutin, Dist 16; Sen. Barnes, Jr., Dist 17; Sen. Bradley, Dist 3; Sen. Carson, Dist 14; Sen. Bragdon, Dist 11; Sen. De Blois, Dist 18; Sen. Forsythe, Dist 4; Sen. Gallus, Dist

1; Sen. Groen, Dist 6; Sen. Lambert, Dist 13; Sen. Luther, Dist 12; Sen. White, Dist 9; Rep. Baldasaro, Rock 3; Rep. Jennifer Coffey, Merr 6; Rep. Swinford, Belk 5 [It's nice to know who these legislators are so you can support them in the future and politically and economically punish those who don't stand up for your right to defend yourself and your family.]

* * *

This bill:

I. Allows a person who is anywhere he or she has a right to be to use deadly force to protect oneself or a third person. [This is quite an over simplification. Don't forget about the exceptions to the right to defend yourself or others we explain in New Hampshire's subchapter. The point is that, in this bill, you don't have to retreat before using justifiable deadly force, if you are attacked while in a place you have a right to be. Trespassers must retreat.]

II. Inserts a civil immunity provision for the use of force against a perpetrator in certain circumstances.

III. Deletes the minimum mandatory sentencing requirement for felony convictions which include the possession, use, or attempted use of a firearm.

IV. Amends the definition of "non-deadly force" to include the act of producing or displaying a weapon. [The more states that clarify this, the better for all of us as we explain in Chapter 20.]

Explanation: Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

* * *

AN ACT relative to physical force in defense of a person, relative to producing or displaying a firearm or other means of self-defense, and relative to eliminating minimum sentencing and adding civil immunity for certain firearm use.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Physical Force in Defense of Person. Amend [RSA 627:4](#), III to read as follows:

III. A person is not justified in using deadly force on another to defend himself or *herself or* a third person from deadly force by the other if he *or she* knows that he *or she* and the third person can, with complete safety: [This sentence adds a sprinkle of a political correctness to NH's law of self-defense.]

(a) Retreat from the encounter, except that he *or she* is not required to retreat if he *or she* is within his *or her* dwelling [or], its curtilage, *or anywhere he or she has a right to be*, and was not the initial aggressor; or [This is the meat of this bill. A person is not required to retreat from any place he or she has a legal right to be before using justifiable deadly force. The flip side of this rule is that trespassers must retreat. This rule is consistent with the rule in force in most of the Western and Southern states.]

(b) Surrender property to a person asserting a claim of right thereto; or [e.g. the repo man or your landlord.]

(c) Comply with a demand that he *or she* abstain from performing an act which he *or she* is not obliged to perform [Like we said in New Hampshire's subchapter, we're not entirely sure what this means. Unfortunately, it remains in the statute ready to bite innocent persons simply trying to survive a violent attack when we lawyers haven't been able to find a plain talk explanation for exactly what it means. It sure would be nice for the legislature to either explain it or repeal it!]; nor is the use of deadly force justifiable when, with the purpose of causing death or serious bodily harm, the [ætoʊ] *person* has provoked the use of force against himself *or herself* in the same encounter[-]; *or* [provocation, including words alone, as we pointed out in New Hampshire's chapter, can destroy your right to defend yourself.]

(d) If he *or she* is a law enforcement officer or a private person assisting [him] *the officer* at [his] *the officer's* direction and was acting pursuant to [RSA 627:5](#), [he] *the person* need not retreat.

2 Sentences and Limitations. Amend [RSA 651:2](#), II-g to read as follows:

II-g. If a person is convicted of a felony, an element of which is the possession, use or attempted use of a deadly weapon, and the deadly weapon is a firearm, such person may be sentenced to a maximum term of 20 years' imprisonment in lieu of any other sentence prescribed for the crime. [~~The person shall be given a minimum mandatory sentence of not less than 3 years' imprisonment for a first offense and a minimum mandatory sentence of not less than 6 years' imprisonment if such person has been previously convicted of any state or federal offense for which the maximum penalty provided was imprisonment in excess of one year, and an element of which was the possession, use or attempted use of a firearm. Neither the whole nor any part of the minimum sentence imposed under this paragraph shall be suspended or reduced.~~] [We presume the mandatory minimum was taken out to benefit those poor saps who didn't quite have justification to use deadly force in self-defense, but had good reasons, nevertheless. This is sometimes referred to as an "imperfect" self-defense, and often results in a conviction of manslaughter of some degree rather than murder. **Example:** Peter provokes a fist fight not

expecting it to escalate to the use of deadly force. His opponent, a notorious drug dealer and killer, pulls a knife. Although Peter could have and should have retreated, he mistakenly believes he doesn't have to retreat and he shoots and kills the knife wielder. The Legislature apparently wanted to give courts the discretion of not sentencing Peter to the full 3 years of the mandatory minimum under similar circumstances.]

3 New Section; Justification; Civil Immunity. Amend [RSA 627](#) by inserting after section 1 the following new section:

627:1-a Civil Immunity. A person who uses force in self-protection or in the protection of other persons pursuant to [RSA 627:4](#), in the protection of premises and property pursuant to [RSA 627:7](#) and 627:8, in law enforcement pursuant to [RSA 627:5](#), or in the care or welfare of a minor pursuant to [RSA 627:6](#), is justified in using such force and shall be immune from civil liability for personal injuries sustained by a perpetrator which were caused by the acts or omissions of the person as a result of the use of force. In a civil action initiated by or on behalf of a perpetrator against the person, the court shall award the person reasonable attorney's fees, and costs, including but not limited to, expert witness fees, court costs, and compensation for loss of income. [This new provision is similar to most other civil immunity statutes. It protects those who use justifiable deadly force to defend themselves or others from civil lawsuits. It also awards attorneys fees, costs and lost income to those persons whose acts of self-defense were justified.]

4 Justification; Definitions. Amend [RSA 627:9](#), IV to read as follows:

IV. "Non-deadly force" means any assault or confinement which does not constitute deadly force. *The act of producing or displaying a weapon shall constitute non-deadly force.* [This is an exciting addition. Police and prosecutors often equate showing a weapon to the use of deadly force. It's not. It could be a threat of the use of deadly force, but is not the use of deadly force. This statute makes it clear that a threat of deadly force is non-deadly force. Sometimes it may be justifiable to threaten deadly force to prevent a non-deadly assault, for example, a threatened assault by more than one assailant. This paragraph allows a jury to conclude that a threat to use deadly force is a reasonable response to someone without a weapon who threatens a beating. In other words, non-deadly force being used to stop the unlawful use of non-deadly force. Thus, threatening with a weapon may not be as readily prosecutable as it once was, having been considered the use of deadly force by some police and prosecutors, which, in turn, was considered disproportionate to, and excessive compared to a threat of a simple assault without a weapon. On the other hand, a jury might conclude a threat to use a weapon to be disproportionate to and an unreasonably excessive when used to stop someone from slapping the person with the weapon. Don't end up the test case.]

5 Effective Date. This act shall take effect 60 days after its passage.

VETOED: July 13, 2011 [But later veto was overridden by Legislature and bill became law on November 14, 2011.]

North Carolina

North Carolina has repealed its outdated, inadequate and misleading self-defense law § 14-51.1 (pages 296-7 of Self-Defense Law book) and passed a home defense law and stand-your-ground law patterned after Florida's excellent home defense law. The law creates a presumption of innocence for those defending their homes, occupied vehicles and workplaces from unlawful intruders. The stand-your-ground portion of the law eliminates the need to retreat before using justifiable deadly force. You don't have to retreat from places where you have a right to be, including places outside of your home, occupied vehicle or workplace. The flipside of that rule, however, is that trespassers must retreat. The new statutes, which went into effect December 1, 2011, also provide protection from civil lawsuits to those who comply with the law in defending themselves and others.

N.C.G.S.A. § 14-51.2

§ 14-51.2. Home, workplace, and motor vehicle protection; presumption of fear of death or serious bodily harm [Defense of Self and Third Persons in these Special Places]

(a) The following definitions apply in this section:

(1) Home.--A building or conveyance of any kind, to include its curtilage, [the area immediately around the building] whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed as a temporary or permanent residence. [Simply speaking, wherever you've stopped to sleep.]

(2) Law enforcement officer.--Any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, probation officer, post-release supervision officer, or parole officer.

(3) Motor vehicle.--As defined in [G.S. 20-4.01\(23\)](#). [Oddly, does not include mopeds.]

(4) Workplace.--A building or conveyance of any kind, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, which is being used for commercial purposes.

(b) The lawful occupant of a home, motor vehicle, or workplace is presumed to have held a reasonable fear of imminent death or serious bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or serious bodily harm to another if both of the following apply: [You are presumed innocent in using deadly force to defend your home, vehicle and workplace if . . .]

(1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a home, motor vehicle, or workplace, or if that person had removed or was attempting to remove another against that person's will from the home, motor vehicle, or workplace. [. . . you use force against an intruder who is trying to break in or has broken into your home, occupied (by persons) vehicle, or workplace. Notice the law requires an unlawful and forcible entry or attempted entry. It's a good reminder to lock your doors and windows. Unfortunately, unlike states like Utah, this statute does not expressly justify using deadly force against someone either sneaking into your home or gaining entrance by deceptive means. Under such circumstances, the homeowner will apparently have to be facing an imminent threat of death or serious injury to use deadly force. An attempted kidnapping also justifies the use of deadly force.]

(2) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred. [You have to know or have reason to believe the entry by the intruder was both unlawful and forcible. You can't use deadly force against your son's weird friend if your son has given the friend permission to enter the home. Permission would mean the entry is not unlawful.]

(c) The presumption set forth in subsection (b) of this section shall be rebuttable and does not apply in any of the following circumstances: [Most presumptions are rebuttable (unlike Florida's which some claim is not). If the state proves you invited someone in, but made it look like they broke in just so you could shoot them, then the presumption of innocence is rebutted and you will be found guilty.]

(1) The person against whom the defensive force is used has the right to be in or is a lawful resident of the home, motor vehicle, or workplace, such as an owner or lessee, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person. [For example, there is no presumption of innocence if you use deadly force against a co-tenant or co-employee who has a right to be in the home or workplace. However, if a wife has a court order telling her husband to stay out of the home, even though he is a part owner, then she regains the right to use deadly force if he attempts an unlawful and forcible entry.]

(2) The person sought to be removed from the home, motor vehicle, or workplace is a child or grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the defensive force is used. [You can't use deadly force to settle custody disputes!]

(3) The person who uses defensive force is engaged in, attempting to escape from, or using the home, motor vehicle, or workplace to further any criminal offense that involves the use or threat of physical force or violence against any individual. [If you're acting like Bonnie and Clyde you aren't justified in using deadly force.]

(4) The person against whom the defensive force is used is a law enforcement officer or bail

bondsman who enters or attempts to enter a home, motor vehicle, or workplace in the lawful performance of his or her official duties, and the officer or bail bondsman identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer or bail bondsman in the lawful performance of his or her official duties. [You can't knowingly use deadly force against Marshall Dillon or Dawg the Bounty Hunter.]

(5) The person against whom the defensive force is used (i) has discontinued all efforts to unlawfully and forcefully enter the home, motor vehicle, or workplace and (ii) has exited the home, motor vehicle, or workplace. [A Quigly-Down-Under shot to the back of the head of your retreating intruder at 900 yards with your 45-90 will result with your heiny on the barbie.]

(d) A person who unlawfully and by force enters or attempts to enter a person's home, motor vehicle, or workplace is presumed to be doing so with the intent to commit an unlawful act involving force or violence. [If he breaks the lock, you rock his clock (with your Glock)!]

(e) A person who uses force as permitted by this section is justified in using such force and is immune from civil or criminal liability for the use of such force, unless the person against whom force was used is a law enforcement officer or bail bondsman who was lawfully acting in the performance of his or her official duties and the officer or bail bondsman identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer or bail bondsman in the lawful performance of his or her official duties. [If you understand and follow this new law of self-defense, you shouldn't be arrested or sued unless you shot the sheriff or a bail bondsman.]

(f) A lawful occupant within his or her home, motor vehicle, or workplace does not have a duty to retreat from an intruder in the circumstances described in this section. [There is no duty to retreat before using deadly force to defend yourself or third persons in these special places as explained in this section. However, this section does not appear to disturb the holding of the NC case *State v. Pearson* which our legal data base (Westlaw) says is still good law in NC. That case says there is no duty to retreat outside the home if facing a deadly threat, but there is still a duty to retreat before using non-deadly force. See page 296 of Self-Defense Laws of All 50 States.]

(g) This section is not intended to repeal or limit any other defense that may exist under the common law. [The cases we cited in our first edition favorable to the law of self-defense still apply.]

§ 14-51.3. Use of force in defense of person; relief from criminal or civil liability

(a) **[Non-Deadly Force]** A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that the conduct is necessary to defend

himself or herself or another against the other's imminent use of unlawful force. **[Deadly Force]** However, a person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if either of the following applies:

(1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another. **[Outside of the home, occupied vehicle or workplace, you must be facing an imminent threat of death or serious bodily injury before you can use deadly force. *Pancho's Wisdom* – Unlike in Florida and Utah, NC does not list certain forcible felonies that automatically trigger the right to defend with deadly force. See Chapter 20 of Self-Defense Laws of All 50 States and the Forcible Felonies listed in the states of Utah and Florida.]**

(2) Under the circumstances permitted pursuant to [G.S. 14-51.2](#). **[Reference to the home, motor vehicle and workplace defense statute above.]**

(b) A person who uses force as permitted by this section is justified in using such force and is immune from civil or criminal liability for the use of such force, unless the person against whom force was used is a law enforcement officer or bail bondsman who was lawfully acting in the performance of his or her official duties and the officer or bail bondsman identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer or bail bondsman in the lawful performance of his or her official duties. **[Again, if you understand and follow this new law of self-defense, you shouldn't be arrested or sued unless you shot the sheriff or a bail bondsman.]**

OKLAHOMA 26 April 2011 Update

Welcome addition to Oklahoma's Defense of Special Places Statute 21 Okl.St. Ann. § 1289.25.

The State of Oklahoma just added "place of business" to the special places that are protected under its statute authorizing the use of deadly force against unlawful and forcible entries into homes, temporary homes (tents, apartments, etc.), and vehicles.

We'd like to congratulate the Oklahoma Legislature for enacting, Oklahoma's Governor Mary Fallin for signing and the citizens of Oklahoma for working so hard to get this new law passed. The new law does not go into effect until November 1, 2011.

Please read our Oklahoma subchapter carefully. Notice that we warn that the courts have changed the meaning of the state's self-defense statutes through their use of jury instructions. All cautions we give in Oklahoma's subchapter still apply except that the phrase "place of business" has been added to the statute and undoubtedly will be added to jury instructions after November 1st.

We hope employers will not try to undercut this valuable addition by prohibiting employees from having defensive weapons at work. Those negotiating with employers should tell them that Utah's state employees with concealed weapon permits, including teachers from kindergarten to colleges and universities, have been allowed to carry concealed weapons to work since January of 2001. There have been no negative incidents or injuries. There have also been no workplace or school shootings in these places of employment. It is our opinion that "gun free zones" attract mass killers like chumming attracts sharks. Post Offices, where guns are not allowed, are a prime example. Post Office employees have been going "postal" for 30 years. Meanwhile, the federal government insanely continues to do the same ol' thing over and over (maintaining "gun free zones") while expecting different results (hoping "going postal" will stop because they continue to maintain "gun free zones"). When will they ever learn? Hopefully Oklahoma employers will not make the same politically correct mistake as the US Postal Service.

PENNSYLVANIA

[In 2011, Pennsylvania's legislature made sweeping changes to its self-defense code. We included the legislative findings to give you a flavor what the Legislature seems to want to accomplish. We caution you, however, that the actual statute doesn't seem to be as broad as the findings suggest. Words that have lines through them ~~like this~~ were taken out of the statute and words highlighted in blue **like this** were added as part of the changes.

ACT NO. 2011-10

H.B. No. 40

CRIMES AND OFFENSES--OMNIBUS AMENDMENTS

AN ACT Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing, in general principles of justification, for definitions, for use of force in self-protection, for use of force for the protection of other persons, for grading of theft offenses and for licenses to carry firearms; and providing for civil immunity for use of force.

The General Assembly finds that: [These are the findings we referred to above. They are not part of the statute, but they could give courts a clue about the Legislature's intent. Be careful of the broad statement in paragraph 5 below.]

- (1) It is proper for law-abiding people to protect themselves, their families and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.
- (2) The Castle Doctrine is a common law doctrine of ancient origins which declares that a home is a person's castle.
- (3) Section 21 of Article I of the Constitution of Pennsylvania guarantees that the "right of the citizens to bear arms in defense of themselves and the State shall not be questioned."
- (4) Persons residing in or visiting this Commonwealth have a right to expect to remain unmolested within their homes or vehicles.
- (5) No person should be required to surrender his or her personal safety to a criminal, nor should a person be required to needlessly retreat in the face of intrusion or attack outside the person's home or vehicle. [The key phrase

is “needlessly retreat.” There are still instances where retreat is required before using defensive force as we more specifically describe below.]

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 501 of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 501. Definitions [Only the new definitions are included below.]

* * *

“Dwelling.” Any building or structure, **including any attached porch, deck or patio**, though movable or temporary, or a portion thereof, which is for the time being the home or place of lodging of the actor. [The attached porch, deck or patio are additional places you do not have to retreat from before using justifiable deadly force.]

“Peace officer.” Any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, or any person on active State duty pursuant to ~~section 311 of the act of May 27, 1949 (P.L. 1903, No. 568), known as “The Military Code of 1949.”~~ **51 Pa.C.S. § 508 (relating to active duty for emergency)**. The term “peace officer” shall also include any member of any park police department of any county of the third class.

“Residence.” A dwelling in which a person resides, either temporarily or permanently, or visits as an invited guest. [The new “no retreat” rules apply to temporary dwellings, such as someone else’s home (assuming you’re not the aggressor) if you are a house guest, hotel rooms, tents and campers.]

* * *

“Vehicle.” A conveyance of any kind, whether or not motorized, that is designed to transport people or property. [The new “no retreat” rules apply to occupied vehicles as well.]

* * *

§ 505. Use of force in self-protection

* * *

(b) Limitations on justifying necessity for use of force.--

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

(i) to resist an arrest which the actor knows is being made by a peace officer, although the arrest is unlawful; or

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

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

(B) the actor has been unlawfully dispossessed of the property and is making a reentry or recaption

justified by section 507 of this title (relating to use of force for the protection of property); or

(C) the actor believes that such force is necessary to protect himself against death or serious bodily injury.

(2) The use of deadly force is not justifiable under this section unless the actor believes that such force is necessary to protect himself against death, serious bodily injury, kidnapping or sexual intercourse compelled by force or threat; nor is it justifiable if:

(i) the actor, with the intent of causing death or serious bodily injury, provoked the use of force against himself in the same encounter; or

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

[Nice to see they got rid of the “surrender possession” requirement. We had a tough time figuring out what that even means. But notice there is still a requirement of retreating outside of one’s home, dwelling, place of work, and occupied vehicle unless the situation falls within one of the exceptions described below. *Pancho’s Wisdom* – This is still too darn confusing. Why not just adopt the rule that applies in most western and southern states that you don’t have to retreat unless you are a trespasser?]

~~(A)~~ the actor is not obliged to retreat from his dwelling or place of work, unless he was the initial aggressor or is assailed in his place of work by another person whose place of work the actor knows it to be ~~and~~ [Although you normally don’t have to retreat from your place of work, you need to if it can be done in complete safety and the assailant is a co-worker.]

* * *

[Paragraphs 2.1 and 2.2 below are patterned after Florida’s excellent home defense law although the language is not identical. We encourage you to read Florida’s subchapter in our book. Some of the same cautions apply.]

(2.1) Except as otherwise provided in paragraph (2.2), an actor is presumed to have a reasonable belief that deadly force is immediately necessary to protect himself against death, serious bodily injury, kidnapping or sexual intercourse compelled by force or threat if both of the following conditions exist: [It is presumed your use of deadly force is justified if the conditions immediately below are met. Don’t forget, presumptions ARE rebuttable. See our cautions in the Florida subchapter.]

(i) The person against whom the force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcefully entered and is present within, a dwelling, residence or occupied vehicle; or the person against whom the force is used is or is attempting to unlawfully and forcefully remove another against that other’s will from the dwelling, residence or occupied vehicle. [The entry or attempted entry must be unlawful AND forcible. Therefore, if the person you shoot had permission to be in the house, that won’t work. Forcible means busting down the door, breaking a window or at least forcing himself through your door despite your protests.]

(ii) The actor knows or has reason to believe that the unlawful and forceful entry or act is occurring or has occurred.

(2.2) The presumption set forth in paragraph (2.1) does not apply if:

(i) the person against whom the force is used has the right to be in or is a lawful resident of the dwelling, residence or vehicle, such as an owner or lessee; [If you shoot your roomy, the presumption doesn’t apply. Of course if your roomy pulls out a gun and threatens to kill you for stealing his girlfriend, that certainly

could be considered an imminent threat of deadly force, which in and of itself could justify your use of deadly force. If that were the case, you wouldn't need the presumption.]

(ii) the person sought to be removed is a child or grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the protective force is used; [The Legislature didn't want you killing your kin over custody disputes. Therefore, the presumption doesn't apply in such circumstances.]

(iii) the actor is engaged in a criminal activity or is using the dwelling, residence or occupied vehicle to further a criminal activity; or [The presumption doesn't apply if your basement is a greenhouse for marihootchi or you're making money selling hootchi kootchi.]

(iv) the person against whom the force is used is a peace officer acting in the performance of his official duties and the actor using force knew or reasonably should have known that the person was a peace officer. [You shoot the law and the law wins.]

(2.3) An actor who is not engaged in a criminal activity, who is not in illegal possession of a firearm and who is attacked in any place where the actor would have a duty to retreat under paragraph (2)(ii) has no duty to retreat and has the right to stand his ground and use force, including deadly force, if: [You still have a duty to retreat before using deadly force when outside of your dwelling, temporary dwelling or occupied vehicle unless all of the following conditions are met.]

(i) the actor [you] has a right to be in the place where he was attacked;

(ii) the actor believes it is immediately necessary to do so to protect himself against death, serious bodily injury, kidnapping or sexual intercourse by force or threat; and

(iii) the person against whom the force is used [your assailant, the bad guy] displays or otherwise uses:

(A) a firearm or replica of a firearm as defined in 42 Pa.C.S. § 9712 (relating to sentences for offenses committed with firearms); or

(B) any other weapon readily or apparently capable of lethal use. [This is hardly a protective statute compared to most western and southern states that relieve citizens of the need to retreat as long as they are in a place they have a legal right to be. But at least it does away with the duty to retreat when facing armed kidnapers and rapists.]

(2.4) The exception to the duty to retreat set forth under paragraph (2.3) does not apply if the person against whom the force is used is a peace officer acting in the performance of his official duties and the actor using force knew or reasonably should have known that the person was a peace officer. [Duh!]

(2.5) Unless one of the exceptions under paragraph (2.2) applies, a person who unlawfully and by force enters or attempts to enter an actor's dwelling, residence or occupied vehicle or removes or attempts to remove another against that other's will from the actor's dwelling, residence or occupied vehicle is presumed to be doing so with the intent to commit:

(i) an act resulting in death or serious bodily injury; or

(ii) kidnapping or sexual intercourse by force or threat.

(2.6) A public officer justified in using force in the performance of his duties or a person justified in using force in his assistance or a person justified in using force in making an arrest or preventing an escape is

not obliged to desist from efforts to perform such duty, effect such arrest or prevent such escape because of resistance or threatened resistance by or on behalf of the person against whom such action is directed.

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

* * *

(d) Definition.--As used in this section, the term “criminal activity” means conduct which is a misdemeanor or felony, is not justifiable under this chapter and is related to the confrontation between an actor and the person against whom force is used. [Committing a simple misdemeanor could cause you to lose the presumption allowing you use deadly force to defend your home and forces you to retreat, if possible, before using deadly force. For example, you start a fistfight with someone (simple misdemeanor assault), they draw a knife. If you can retreat safely, you must before using deadly defensive force. As we explained in Chapters 3, 4 and 7, whenever the defender is somewhat responsible for starting or escalating a fight, this greatly increases the chances of arrest, prosecution and conviction.]

Section 3. Section 506 of Title 18 is amended to read:

§ 506. Use of force for the protection of other persons

(a) General rule.--The use of force upon or toward the person of another is justifiable to protect a third person when:

(1) the actor would be justified under section 505 of this title (relating to use of force in self-protection) in using such force to protect himself against the injury he believes to be threatened to the person whom he seeks to protect;

(2) under the circumstances as the actor believes them to be, the person whom he seeks to protect would be justified in using such protective force; and

(3) the actor believes that his intervention is necessary for the protection of such other person.

(b) Exceptions Exception.--Notwithstanding subsection (a) of this section:

~~(1) When the actor would be obliged under section 505 of this title to retreat, to surrender the possession of a thing or to comply with a demand before using force in self protection, he is not obliged to do so before using force for the protection of another person, unless he knows that he can thereby secure the complete safety of such other person.~~

~~(2) When the person whom the actor seeks to protect would be obliged under section 505 of this title to retreat, to surrender the possession of a thing or to comply with a demand if he knew that he could obtain complete safety by so doing, the actor is obliged to try to cause him to do so before using force in his protection if the actor knows that he can obtain complete safety in that way.~~

~~(3) Neither the actor nor the person whom he seeks to protect is obliged to retreat when in the dwelling or place of work of the other to any greater extent than in his own.~~ **, the actor is not obliged to retreat to any greater extent than the person whom he seeks to protect.** [If the person you are trying to defend has a duty to retreat before using deadly force, so must you (and impliedly, you must attempt to get the person you are trying to defend to retreat as well). **Pancho’s Wisdom** – This could get complicated. Suppose you are walking along the sidewalk armed with a concealed weapon. A white van pulls up; an unarmed man jumps up and attempts to kidnap a child

near you. The child yells “kidnapper!” The kidnapper is startled, falls down, but the child can’t run (retreat) because he’s paralyzed with fear. Because the kidnapper is unarmed, under Pennsylvania’s complicated retreat requirement, there might be a question about you standing your ground and using deadly force to prevent the kidnapping. In Utah, we’d simply shoot the S.O.B. and the city would hold a ticker tape parade in our honor.]

* * *

§ 8340.2. Civil immunity for use of force

[If your use of force under Pennsylvania’s self and home defense statutes was justified, your holey (not holy) assailant cannot win a civil lawsuit against you. If you win the civil case, the court must award attorney fees and costs against the lame b@\$tard you shot for trying to burglarize your home. Of course, getting blood out of a turnip can be difficult.]

(a) General rule.--An actor who uses force:

(1) in self-protection as provided in 18 Pa.C.S. § 505 (relating to use of force in self-protection);

(2) in the protection of other persons as provided in 18 Pa.C.S. § 506 (relating to use of force for the protection of other persons);

(3) for the protection of property as provided in 18 Pa.C.S. § 507 (relating to use of force for the protection of property);

(4) in law enforcement as provided in 18 Pa.C.S. § 508 (relating to use of force in law enforcement); or

(5) consistent with the actor's special responsibility for care, discipline or safety of others as provided in 18 Pa.C.S. § 509 (relating to use of force by persons with special responsibility for care, discipline or safety of others)

is justified in using such force and shall be immune from civil liability for personal injuries sustained by a perpetrator which were caused by the acts or omissions of the actor as a result of the use of force.

(b) Attorney fees and costs.--If the actor who satisfies the requirements of subsection (a) prevails in a civil action initiated by or on behalf of a perpetrator against the actor, the court shall award reasonable expenses to the actor. Reasonable expenses shall include, but not be limited to, attorney fees, expert witness fees, court costs and compensation for loss of income.

(c) Definition.--As used in this section, the term “perpetrator” shall mean a person against whom an actor is justified in using force as provided by 18 Pa.C.S. § 505, 506, 507, 508 or 509.

Section 8. This act shall take effect in 60 days. [Went into effect August 28th, 2011.]

Approved June 28, 2011.

TEXAS – Civil Immunity

In our first edition, because of the language of Texas Penal Code §9.06 Civil Remedies

Unaffected (part of Texas' Self-Defense Laws), we concluded that citizens defending themselves in Texas were not immune from being sued for an act of self-defense. **Section 9.06** states:

§ 9.06. Civil Remedies Unaffected

The fact that conduct is justified under this chapter does not abolish or impair any remedy for the conduct that is available in a civil suit. Amended by Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994.

Then one of our readers kindly pointed us to Section **83.001** of the **TEXAS CIVIL PRACTICE AND REMEDIES CODE: Title 4. Liability in Tort** which states:

CHAPTER 83. USE OF DEADLY FORCE IN DEFENSE OF PERSON

Sec. 83.001. CIVIL IMMUNITY. A defendant who uses force or deadly force that is justified under Chapter 9, Penal Code, is immune from civil liability for personal injury or death that results from the defendant's use of force or deadly force, as applicable. Added by Acts 1995, 74th Leg., ch. 235, Sec. 2, eff. Sept. 1, 1995. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1, Sec. 4, eff. September 1, 2007.

Section 83.001 was passed in 2007 with the apparent intent of giving civil immunity to those persons whose actions are justified under Chapter 9 which contains Texas' self-defense statutes. But it's troubling that Section 9.06, which seems to preserve civil liability for injuries related to acts of self-defense, has never been repealed.

We checked Texas case law recently and it doesn't appear a court has reconciled these seemingly two inconsistent statutes. However, a defendant's attorney in a civil case would certainly argue that the civil immunity statute, 83.001, is newer. It was passed in 2007 whereas 9.06 became effective in 1994. Furthermore, 83.001 is more specific about granting immunity, whereas 9.06 seems to refer to civil remedies in general language. Generally, statutes with specific language addressing an issue take priority over statutes that refer to the issue in only general terms. Until the Texas courts resolve the apparent ambiguity between the two statutes or the Texas Legislature repeals 9.06, we can only say that there is "probably" immunity from civil suit if a defender is justified under the state's self-defense statute. Again, we hope yours is not the test case. We urge Texans to work hard to get section 9.06 repealed to wipe out any question that persons justified under Texas self-defense laws are unequivocally immune from civil lawsuits.

Utah

[Before 2012, Utah's civil immunity statute may have been the most protective in the nation. Now it is hands down the most protective. Before this year's amendment, a person injured or killed by someone defending his home or property could recover civil damages if he proved he was "clearly retreating" and "had not committed a felony." Now, the injured person or his heirs, if he was killed, must prove that he wasn't committing any crime when injured. Stated another way, a person who is injured or killed committing a crime cannot recover civil damages against a person defending life or property. Nevertheless, like under the old law, if the injured person ceases all criminal activity and is "clearly retreating," when he gets shot in the back of the head at 800 yards by your 45-90, either he or his heirs will probably be able to sue you.

Warning!: Just because you can't be sued by someone committing a crime, doesn't mean you can't be prosecuted for murder! **Example:** You whack a 4 year old stealing your kid's tricycle. Under this new law, barring any constitutional challenges, you can't be sued. However, killing someone over a trike is murder. You WILL be prosecuted. Furthermore, just because the civil liability immunity statute protects you from civil lawsuits, doesn't mean that a court can't force you to pay full restitution under the criminal laws of the state.

The **bold** in the body of the bill shows this year's additions to the statute and the ~~strikeouts~~ show what was deleted.]

§ 78B-3-110. Defense to civil action for damages resulting from commission of crime

(1) A person may not recover from the victim of a crime for personal injury or property damage if ~~the person:~~

(a) **the person** entered the property of the victim **or the victim's family** with criminal intent and the injury or damage **was inflicted by the victim or** occurred while the person was on the victim's property; or

(b) **the person** committed a crime against the victim **or the victim's family**, during which the damage or injury occurred.

(2) The provisions of Subsection (1) do not apply if the person can prove by clear and convincing evidence that: ~~(a) the person's actions did not constitute a felony; and~~ **crime.**

~~(b) the person's culpability was less than the person from whom recovery is sought.~~

~~(3) Subsections (1) and (2) apply~~

(3) Subsection (1) applies to any next-of-kin, heirs, or personal representatives of the person if the person acquires a disability or is killed.

(4) Subsections (1), **and (2), and (3)** do not apply if the person committing or attempting to commit the crime has clearly retreated from the criminal activity.

(5) “Clearly retreated” means that the person committing the criminal act has fully, clearly, and immediately ceased all hostile, threatening, violent, or criminal behavior or activity.

Section 2. Effective date. **[Currently Effective.]**

WISCONSIN

[Wisconsin’s new “castle law” expands the state’s home defense law to protect a person’s occupied vehicle and that person’s business in both criminal and civil liability cases. 895.62 protects those defending themselves in these “special places” from personal injury lawsuits and 939.48 protects defenders from criminal prosecution.]

WISCONSIN 2011-2012 LEGISLATIVE SERVICE 2011-2012 Biennial Session

2011 WIS. ACT 94
2011 A.B. 69

SELF DEFENSE--FORCIBLE ENTRY AND DETAINER--THREATS

Date of enactment: December 7, 2011

Date of publication: December 20, 2011

Effective date: December 21, 2011

An Act *to create* 895.62 and 939.48(1m) of the statutes; relating to: self-defense.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Section 1. 895.62 of the statutes is created to read:

<< WI ST 895.62 **[Protection from Civil Lawsuits]**>>

895.62. Use of force in response to unlawful and forcible entry into a dwelling, motor vehicle, or place of business; civil liability immunity

[This is Wisconsin's new law that protects persons defending their homes, vehicles and businesses from civil lawsuits IF certain conditions are met.]

(1) In this section:

(a) “Actor” means a person who uses force that is intended or likely to cause death or great bodily harm to another person.

(b) “Dwelling” has the meaning given in s. 895.07(1)(h). [Fortunately, the term dwelling has a rather broad meaning in Wisconsin: “(h) ‘Dwelling’ means any premises or portion of a premises that is used as a home or a place of residence and that part of the lot or site on which the dwelling is situated that is devoted to residential use. “Dwelling” includes other existing structures on the immediate residential premises such as driveways, sidewalks, swimming pools, terraces, patios, fences, porches, garages, and basements.”]

(c) “Place of business” means a business that the actor owns or operates. [This applies to business owners and managers, not ordinary employees who do not have an ownership interest.]

(2) Except as provided in sub. (4), an actor is immune from civil liability arising out of his or her use of force that is intended or likely to cause death or great bodily harm if the actor reasonably believed that the force was necessary to prevent imminent death or bodily harm to himself or herself or to another person and either of the following applies: [You won't be held liable for money damages to someone you've shot IF you don't use more force than NECESSARY to keep that person from seriously injuring you or others and IF . . .]

(a) The person against whom the force was used was in the process of unlawfully and forcibly entering the actor's dwelling, motor vehicle, or place of business, the actor was on his or her property or present in the dwelling, motor vehicle, or place of business, and the actor knew or had reason to believe that an unlawful and forcible entry was occurring.

(b) The person against whom the force was used was in the actor's dwelling, motor vehicle, or place of business after unlawfully and forcibly entering it, the actor was present in the dwelling, motor vehicle, or place of business, and the actor knew or had reason to believe that the person had unlawfully and forcibly entered the dwelling, motor vehicle, or place of business. [. . . IF the intruder, without your permission, tries to force his way or has forced his way into your occupied home, vehicle or business.]

(3) If sub. (2)(a) or (b) applies, the finder of fact may not consider whether the actor had an opportunity to flee or retreat before he or she used force and the actor is presumed to have reasonably believed that the force was necessary to prevent imminent death or bodily harm to himself or herself or to another person. [There is no duty to retreat from your occupied home, vehicle or business before using justifiable deadly force.]

(4) The presumption described in sub. (3) does not apply if any of the following are true: [The presumption of innocence in your home doesn't apply if you are cooking meth or growing Mary Jane in it, using your car to transport it or shooting cops, ambulance attendants, fire fighters or EMTs to protect your illegal activities – duh.]

(a) The actor was engaged in a criminal activity or was using his or her dwelling, motor vehicle,

or place of business to further a criminal activity at the time he or she used the force described in sub. (2).

(b) The person against whom the force was used was a public safety worker, as defined in s. 941.375(1)(b), who entered or attempted to enter the actor's dwelling, motor vehicle, or place of business in the performance of his or her official duties. This paragraph applies only if at least one of the following applies:

1. The public safety worker identified himself or herself to the actor before the force described in sub. (2) was used by the actor.
2. The actor knew or reasonably should have known that the person entering or attempting to enter his or her dwelling, motor vehicle, or place of business was a public safety worker.

(5) In any civil action, if a court finds that a person is immune from civil liability under sub. (2), the court shall award the person reasonable attorney fees, costs, compensation for loss of income, and other costs of the litigation reasonably incurred by the person. [If your conduct is protected from civil liability under this statute, you are also entitled to be reimbursed your attorney fees, costs, loss of income and other losses from having to defend such a lawsuit.]

(6) Nothing in this section may be construed to limit or impair any defense to civil or criminal liability otherwise available. [Any defenses that were available to you before this act was passed e.g. under the case law of the state (see Wisconsin's chapter in our book), are still available to you.]

Section 2. 939.48(1m) of the statutes is created to read:

<< WI ST 939.48 >>

939.48(1m)(a) In this subsection:

1. "Dwelling" has the meaning given in s. 895.07(1)(h). [Fortunately, the term dwelling has a rather broad meaning in Wisconsin: "(h) 'Dwelling' means any premises or portion of a premises that is used as a home or a place of residence and that part of the lot or site on which the dwelling is situated that is devoted to residential use. 'Dwelling' includes other existing structures on the immediate residential premises such as driveways, sidewalks, swimming pools, terraces, patios, fences, porches, garages, and basements."]
2. "Place of business" means a business that the actor owns or operates. [This means your place of business if you own one. In other words, if you work for someone who owns the place where you work, he is protected by the presumption of innocence when defending his own business, but you do not have the same presumption. If you are an employee, you must first retreat before using deadly force if it is safe for you to do so. As an employee, you may only use deadly force in response to an imminent threat of death or serious bodily injury. Again, the presumptions that apply to the business owner do not apply to you as an employee.]

(ar) If an actor intentionally used force that was intended or likely to cause death or great bodily harm, the court may not consider whether the actor had an opportunity to flee or retreat before he or she used force and shall presume that the actor reasonably believed that the force was necessary to prevent imminent death or great bodily harm to himself or herself if the actor makes such a claim under sub. (1) and either of the following applies:

[You are presumed innocent and don't have a duty to retreat if someone is trying to break into or has broken into your occupied home, vehicle or your business.

Notice this law still has not unequivocally eliminated the duty to retreat when outside of your occupied home, vehicle or business. The duty to retreat when not in your home, occupied vehicle or your own business is still unclear (see Wisconsin subchapter in Self-Defense Laws of All 50 States). If you can retreat safely without using deadly force, you probably should when not in one of these special places. You may not defend unoccupied vehicles or a vacant business with deadly force.]

1. The person against whom the force was used was in the process of unlawfully and forcibly entering the actor's dwelling, motor vehicle, or place of business, the actor was present in the dwelling, motor vehicle, or place of business, and the actor knew or reasonably believed that an unlawful and forcible entry was occurring.

2. The person against whom the force was used was in the actor's dwelling, motor vehicle, or place of business after unlawfully and forcibly entering it, the actor was present in the dwelling, motor vehicle, or place of business, and the actor knew or reasonably believed that the person had unlawfully and forcibly entered the dwelling, motor vehicle, or place of business.

(b) The presumption described in par. (ar) does not apply if any of the following applies:

[Again, the presumption of innocence doesn't apply in these special places if you are conducting illegal activities in them or the person who breaks in is clearly a law enforcement officer, ambulance attendant, fire fighter or EMT.]

1. The actor was engaged in a criminal activity or was using his or her dwelling, motor vehicle, or place of business to further a criminal activity at the time.

2. The person against whom the force was used was a public safety worker, as defined in s. 941.375(1)(b), who entered or attempted to enter the actor's dwelling, motor vehicle, or place of business in the performance of his or her official duties. This subdivision applies only if at least one of the following applies:

a. The public safety worker identified himself or herself to the actor before the force described in par. (ar) was used by the actor.

b. The actor knew or reasonably should have known that the person entering or attempting to enter his or her dwelling, motor vehicle, or place of business was a public safety worker.

Section 3. Initial applicability.

<< Note: WI ST 895.62 >>

(1) This act first applies to a use of force that occurs on the effective date of this subsection.

WI LEGIS 94 (2011-12)
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WYOMING

In 2008, Wyoming passed a home defense statute, **Wyoming Statutes § 6-2-602. Use of force in self defense**. It was patterned after Florida's excellent home defense statute. However, before it was passed, the Wyoming Senate stripped out the "no retreat" language. Although current Wyoming case law and jury instructions say you don't have to retreat before using deadly force to protect persons in your "home or habitation," the fact that the no-retreat provision was left out may give prosecutors an opening to argue that you have to retreat from your own home before using deadly force. As we indicated in the Wyoming subchapter, when defending yourself outside of your home, it appears that a jury can consider that you may have had an opportunity to retreat. Therefore, we suggest you assume you must retreat before using deadly force outside your home if it is safe to do so.

The 2011 bill amending substituted the words "home and habitation" for "occupied structure" in paragraph (b) of § 6-2-602. It also defined the terms "home" and "habitation." The 2011 changes are as follows:

§ 6-2-602. Use of force in self defense

* * * [Paragraph (a) is the same that is in our book.]

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

(i) The person against whom the defensive force is used has a right to be in or is a lawful resident of the ~~occupied structure~~ home or habitation, such as an owner, lessee or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person;

(d) As used in this section:

(i) "Habitation" means any structure which is designed or adapted for overnight accommodation, including, but not limited to, buildings, modular units, trailers, campers and tents;

(ii) "Home" means any occupied residential dwelling place.

Section 2. This act is effective July 1, 2011.

The bottom line is this: Wyoming residents have contacted us saying their Legislature passed a "Castle Doctrine" bill that did away with the duty to retreat before using defensive force. We don't read it that way, but hey, we're all ears. As far as we can tell, in Wyoming, there is still a duty to retreat when using defensive force outside the home. Wyoming's Legislature may have

also unintentionally complicated the issue of whether those using defensive force in the home must first retreat. Before the passage of the bill, the case law was clear you did not have to retreat from your own home. Now we're not so sure. We encourage Wyoming residents to take a copy of our Mother of Self-Defense Laws, Chapter 20, and get their legislators to pass as many of those provisions as possible.

§ 6-1-203. Battered woman syndrome

[While researching the issues above, we came across the fact that Wyoming has a battered-woman-syndrome statute. This makes Wyoming one of the more progressive states on this issue. We're not suggesting you shoot your husband and then get your lawyer to launch a battered-woman-syndrome defense. Far from it. But if you read our Chapter 13 about domestic violence and battered woman syndrome, you'll see that most states' statutes are woefully behind times when dealing with this issue. This has led to some extremely unjust results as explained in Chapter 13.]

(a) The "battered woman syndrome" is defined as a subset under the diagnosis of Post-Traumatic Stress Disorder established in the Diagnostic and Statistical Manual of Mental Disorders III--Revised of the American Psychiatric Association.

(b) If a person is charged with a crime involving the use of force against another, and the person raises the affirmative defense of self-defense, the person may introduce expert testimony that the person suffered from the syndrome, to establish the necessary requisite belief of an imminent danger of death or great bodily harm as an element of the affirmative defense, to justify the person's use of force.