



SPONSOR: Sen. Pinkney & Sen. Lockman & Rep. Dorsey Walker
Sens. Gay, Hansen, S. McBride, Paradee, Sokola,
Sturgeon, Townsend; Reps. Baumbach, Bentz, Kowalko,
Lambert, S. Moore, Morrison, Wilson-Anton

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 147

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO USE OF FORCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 464, Title 11 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 464. Justification — Use of force in self-protection.

4 (a) The use of force upon or toward another person is justifiable when the defendant reasonably believes that such
5 force is immediately necessary for the purpose of protecting the defendant against the use of unlawful force by the other
6 person on the present occasion.

7 (b) Except as otherwise provided in subsections (d) and (e) of this section, a person employing protective force
8 may estimate the necessity thereof under the circumstances as the person reasonably believes them to be when the force is
9 used, without retreating, surrendering possession, doing any other act which the person has no legal duty to do or abstaining
10 from any lawful action.

11 (c) The use of deadly force is justifiable under this section if the defendant reasonably believes that such force is
12 necessary to protect the defendant against death, serious physical injury, kidnapping or sexual intercourse compelled by
13 force or threat.

14 (d) The use of force is not justifiable under this section to resist an arrest which the defendant knows or should
15 know is being made by a peace officer, whether or not the arrest is lawful.

16 (e) The use of deadly force is not justifiable under this section if:

17 (1) The defendant, with the purpose of causing death or serious physical injury, provoked the use of force
18 against the defendant in the same encounter; or

19 (2) The defendant knows that the necessity of using deadly force can be avoided with complete safety by
20 retreating, by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a
21 demand that the defendant abstain from performing an act which the defendant is not legally obligated to perform
22 except that:

- 23 a. The defendant is not obliged to retreat in or from the defendant's dwelling; and
- 24 b. The defendant is not obliged to retreat in or from the defendant's place of work, unless the defendant
- 25 was the initial aggressor; and
- 26 c. A public officer justified in using force in the performance of the officer's duties, or a person justified
- 27 in using force in assisting an officer or a person justified in using force in making an arrest or preventing an
- 28 escape, need not desist from efforts to perform the duty or make the arrest or prevent the escape because of
- 29 resistance or threatened resistance by or on behalf of the person against whom the action is directed.

30 Section 2. Amend § 465, Title 11 of the Delaware Code by making deletions as shown by strike through and

31 insertions as shown by underline as follows:

32 § 465. Justification — Use of force for the protection of other persons.

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

34 (1) The defendant would have been justified under § 464 of this title in using such force to protect the

35 defendant against the injury the defendant reasonably believes to be threatened to the person whom the defendant seeks

36 to protect; and

37 (2) Under the circumstances as the defendant reasonably believes them to be, the person whom the defendant

38 seeks to protect would have been justified in using such protective force; and

39 (3) The defendant reasonably believes that intervention is necessary for the protection of the other person.

40 (b) Although the defendant would have been obliged under § 464 of this title to retreat, to surrender the

41 possession of a thing or to comply with a demand before using force in self-protection, there is no obligation to do so

42 before using force for the protection of another person, unless the defendant knows that the defendant can thereby secure

43 the complete safety of the other person.

44 (c) When the person whom the defendant seeks to protect would have been obliged under § 464 of this title to

45 retreat, to surrender the possession of a thing or to comply with a demand if the person knew that the person could obtain

46 complete safety by so doing, the defendant is obliged to try to cause the person to do so before using force in the person's

47 protection if the actor knows that complete safety can be secured in that way.

48 (d) Neither the defendant nor the person whom the defendant seeks to protect is obliged to retreat when in the

49 other's dwelling or place of work to any greater extent than in their own.

50 Section 3. Amend § 466, Title 11 of the Delaware Code by making deletions as shown by strike through and

51 insertions as shown by underline as follows:

52 § 466. Justification — Use of force for the protection of property.

(a) The use of force upon or toward the person of another is justifiable when the defendant reasonably believes that such force is immediately necessary:

(1) To prevent the commission of criminal trespass or burglary in a building or upon real property in the defendant's possession or in the possession of another person for whose protection the defendant acts; or

(2) To prevent entry upon real property in the defendant's possession or in the possession of another person for whose protection the defendant acts; or

(3) To prevent theft, criminal mischief or any trespassory taking of tangible, movable property in the defendant's possession or in the possession of another person for whose protection the defendant acts.

(b) The defendant may in the circumstances named in subsection (a) of this section use such force as the defendant reasonably believes is necessary to protect the threatened property, provided that the defendant first requests the person against whom force is used to desist from interference with the property, unless the defendant reasonably believes that:

(1) Such a request would be useless; or

(2) It would be dangerous to the defendant or another person to make the request; or

(3) Substantial harm would be done to the physical condition of the property which is sought to be protected before the request could effectively be made.

(c) The use of deadly force for the protection of property is justifiable only if the defendant reasonably believes that:

(1) The person against whom the force is used is attempting to dispossess the defendant of the defendant's dwelling otherwise than under a claim of right to its possession; or

(2) The person against whom the deadly force is used is attempting to commit arson, burglary, robbery or felonious theft or property destruction and either:

a. Had employed or threatened deadly force against or in the presence of the defendant; or

b. Under the circumstances existing at the time, the defendant reasonably believed the use of force other than deadly force would expose the defendant, or another person in the defendant's presence, to the reasonable likelihood of serious physical injury.

(d) Where a person has used force for the protection of property and has not been convicted for any crime or offense connected with that use of force, such person shall not be liable for damages or be otherwise civilly liable to the one against whom such force was used.

Section 4. Amend § 467, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 467. Justification — Use of force in law enforcement.

(a) The use of force upon or toward the person of another is justifiable when:

(1) The defendant is making an arrest or assisting in making an arrest and reasonably believes that such force is immediately necessary to effect the arrest; or

(2) The defendant is attempting to arrest an individual that has taken a hostage, and refused to comply with an order to release the hostage; and

a. The defendant reasonably believes that the use of force is necessary to prevent physical harm to any person taken hostage; or

b. The defendant has been ordered by an individual the defendant reasonably believes possesses superior authority or knowledge to apply the use of force.

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

(1) The defendant makes known the purpose of the arrest or reasonably believes that it is otherwise known or cannot reasonably be made known to the person to be arrested; and

(2) When the arrest is made under a warrant, the warrant is valid or reasonably believed by the defendant to be valid; or

(3) When the arrest is made without a warrant, the defendant reasonably believes the arrest to be lawful.

(c) The use of deadly force is justifiable under this section if all other reasonable means of apprehension have been exhausted, and:

(1) The defendant reasonably believes the arrest is for any crime involving physical injury or threat thereof, and the deadly force is directed at a vehicle to disable it for the purpose of effecting the arrest, or the defendant reasonably believes the arrest is for a felony involving physical injury or threat thereof;

(2) The defendant reasonably believes that the force employed creates no substantial risk of injury to innocent persons; and

(3) The defendant reasonably believes that there is a substantial risk that the person to be arrested will cause death or serious physical injury, or will never be captured if apprehension is delayed.

(d) The use of force to prevent the escape of an arrested person from custody is justifiable when the force could justifiably have been employed to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a peace officer is justified in using any force, including deadly force, which the person reasonably believes to be immediately necessary to prevent the escape of a person from a jail, prison or other institution for the detention of persons charged with or convicted of a crime.

(e) The use of force upon or toward the person of another is justifiable when the defendant reasonably believes that such force is immediately necessary to prevent such other person from committing suicide, inflicting serious physical injury upon the person's self or committing a crime involving or threatening physical injury, damage to or loss of property or a breach of the peace, except that the use of deadly force is not justifiable under this subsection unless:

(1) The defendant reasonably believes that there is a substantial risk that the person whom the defendant seeks to prevent from committing a crime will cause death or serious physical injury to another unless the commission of the crime is prevented and that the use of deadly force presents no substantial risk of injury to innocent persons; or

(2) The defendant reasonably believes that the use of deadly force is necessary to suppress a riot or mutiny after the rioters or mutineers have been ordered to disperse and warned, in any manner that the law may require, that such force will be used if they do not obey.

(f) The use of deadly force is justifiable under this section if the defendant is attempting to arrest an individual that has taken a hostage, and has refused to comply with an order to release the hostage; and

(1) The defendant reasonably believes that the use of force is necessary to prevent physical harm to any person taken hostage, or the defendant has been ordered by an individual the defendant reasonably believes possesses superior authority or knowledge to apply the use of force; and

(2) The defendant reasonably believes that the force employed creates no substantial risk of injury to innocent persons; and

(3) The defendant or a person of superior authority or knowledge who order the use of deadly force reasonably believes that there is a substantial risk that the person to be arrested will cause death or serious physical injury.

Section 5. Amend § 468, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 468. Justification — Use of force by persons with special responsibility for care, discipline or safety of others.

The use of force upon or toward the person of another is justifiable if it is reasonable and moderate and:

(1) The defendant is the parent, guardian, foster parent, legal custodian or other person similarly responsible for the general care and supervision of a child, or a person acting at the request of a parent, guardian, foster parent, legal custodian or other responsible person, and:

a. The force is used for the purpose of safeguarding or promoting the welfare of the child, including the prevention or punishment of misconduct; and

b. The force used is intended to benefit the child, or for the special purposes listed in paragraphs (2)a., (3)a., (4)a., (5), (6) and (7) of this section. The size, age, condition of the child, location of the force and the strength and duration of the force shall be factors considered in determining whether the force used is reasonable and moderate; but

c. The force shall not be justified if it includes, but is not limited to, any of the following: Throwing the child, kicking, burning, cutting, striking with a closed fist, interfering with breathing, use of or threatened use of a deadly weapon, prolonged deprivation of sustenance or medication, or doing any other act that is likely to cause or does cause physical injury, disfigurement, mental distress, unnecessary degradation or substantial risk of serious physical injury or death; or

(2) The defendant is a teacher or a person otherwise entrusted with the care or supervision of a child for a special purpose, and:

a. The defendant reasonably believes the force used is necessary to further the special purpose, including the maintenance of reasonable discipline in a school, class or other group, and that the use of force is consistent with the welfare of the child; and

b. The degree of force, if it had been used by the parent, guardian, foster parent or legal custodian of the child, would be justifiable under paragraph (1)a. and b. of this section and not enumerated under paragraph (1)c. of this section; or

(3) The defendant is the guardian or other person similarly responsible for the general care and supervision of a person who is incompetent, and:

a. The force is used for the purpose of safeguarding or promoting the welfare of the person who is incompetent, including the prevention of misconduct, or, when such person who is incompetent is in a hospital or other institution for care and custody, for the maintenance of reasonable discipline in such institution; and

b. The force used is reasonable and moderate; the size, age, condition of the person who is incompetent, location of the force and the strength and duration of the force shall be factors considered in determining whether the force used is reasonable and moderate; and

c. The force is not enumerated under paragraph (1)c. of this section; and

d. The force is not proscribed as abuse or mistreatment under Chapter 11 of Title 16; or

(4) The defendant is a doctor or other therapist or a person assisting at the doctor's or other therapist's direction, and:

a. The force is used for the purpose of administering a recognized form of treatment which the defendant reasonably believes to be adapted to promoting the physical or mental health of the patient; and

b. The treatment is administered with the consent of the patient or, if the patient is a minor or a person who is incompetent, with the consent of a parent, guardian or other person legally competent to consent in the patient's behalf, or the treatment is administered in an emergency when the defendant reasonably believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent; or

(5) The defendant is a warden or other authorized official of a correctional institution, or a superintendent, administrator or other authorized official of the Division of Youth Rehabilitative Service, and:

a. The defendant reasonably believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution; and

b. The nature or degree of force used is not forbidden by any statute governing the administration of the institution; and

c. If deadly force is used, its use is otherwise justifiable under this Criminal Code; or

(6) The defendant is a person responsible for the safety of a vessel or an aircraft or a person acting at the responsible person's direction, and:

a. The defendant reasonably believes that the force used is necessary to prevent interference with the operation of the vessel or aircraft or obstruction of the execution of a lawful order; and

b. If deadly force is used, its use is otherwise justifiable under this Criminal Code; or

(7) The defendant is a person who is authorized or required by law to maintain order or decorum in a vehicle, train or other carrier or in a place where others are assembled, and:

a. The defendant reasonably believes that the force used is necessary for such purpose; and

b. The force used is not designed to cause or known to create a substantial risk of causing death, physical injury or extreme mental distress.

Section 6. Amend § 470, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 470. Provisions generally applicable to justification.

(a) When the defendant reasonably believes that the use of force upon or toward the person of another is necessary for any of the purposes for which such relief would establish a justification under §§ 462-468 of this title but the defendant is reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief which is material

to the justifiability of the use of force, the justification afforded by those sections is unavailable in a prosecution for an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

(b) When the defendant is justified under §§ 462-468 of this title in using force upon or toward the person of another but the defendant recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those sections is unavailable in a prosecution for an offense involving recklessness or negligence towards innocent persons.

Section 7. Amend § 471, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 471. Definitions relating to justification.

(a) "Deadly force" means force which the defendant uses with the purpose of causing or which the defendant knows creates a substantial risk of causing death or serious physical ~~injury-injury, including the use of a chokehold as~~ "chokehold" is defined under § 607A of this title. Purposely firing a firearm in the direction of another person or at a vehicle in which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the defendant's purpose is limited to creating an apprehension that deadly force will be used if necessary, does not constitute deadly force.

(b) "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is for the time being the defendant's home or place of lodging.

(c) "Force," in addition to its ordinary meaning, includes confinement.

(d) "Physical force" means force used upon or directed toward the body of another person.

(e)(1) "Reasonably believes", when applied to a defendant who is not a law enforcement officer acting in the officer's official capacity, means holds a belief that is reasonable from the viewpoint of a reasonable person in the defendant's situation under the circumstances.

(2) "Reasonably believes", when applied to a defendant who is a law enforcement officer acting in the officer's official capacity, means holds a belief that is reasonable from the viewpoint of a reasonable law enforcement officer in the defendant's situation under the circumstances.

~~(e)(f)~~ "Unlawful force" means force which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or actionable tort or would constitute such offense or tort except for a defense (such as the absence of intent, negligence or mental capacity; duress; youth; or diplomatic status) not amounting to a privilege to use the force. Assent constitutes consent, within the meaning of this section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious bodily harm.

SYNOPSIS

This Act codifies a reasonableness requirement for the use of force, both non-lethal and lethal. This is important when the state of mind is an issue in a criminal trial, such as when the judge or jury must decide as to what someone believed, knew, or intended at a given time.

The justification law as currently written uses the term “defendant believes” throughout its several sections. This Act makes it clear that the determination of one’s state of mind is an objective standard—that is, what a reasonable person would have believed, rather than what the defendant believed.

Additionally, this Act makes clear that deadly force includes the use of a chokehold.

Author: Senator Pinkney