

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 928
PROPOSED COMMITTEE SUBSTITUTE S928-PCS75245-RV-28

Short Title: The Castle Doctrine.

(Public)

Sponsors:

Referred to:

March 26, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY WHEN A PERSON MAY USE DEFENSIVE FORCE TO PROTECT
3 AGAINST THE UNLAWFUL AND FORCIBLE ENTRY INTO THE PERSON'S
4 DWELLING BY ANOTHER, TO PREVENT THE REMOVAL OF A PERSON
5 AGAINST HIS OR HER WILL FROM THE PERSON'S DWELLING, AND TO
6 PROVIDE THAT A PERSON IS JUSTIFIED IN USING DEFENSIVE FORCE IN
7 THESE CIRCUMSTANCES AND SO IS IMMUNE FROM CRIMINAL PROSECUTION
8 AND CIVIL ACTION FOR THE USE OF SUCH FORCE.

9 The General Assembly of North Carolina enacts:

10 SECTION 1. Article 14 of Chapter 14 of the General Statutes is amended by
11 adding a new section to read:

12 "**§ 14-51.2. Home protection; presumption of fear of death or great bodily harm;
13 immunity from criminal prosecution and civil action for justifiable use of force.**

14 (a) The following definitions apply in this section:

15 (1) Criminal prosecution. – The term includes arresting, detaining in custody,
16 and charging or prosecuting the defendant.

17 (2) Dwelling. – A building or conveyance of any kind, including any attached
18 porch, whether the building or conveyance is temporary or permanent,
19 mobile or immobile, which has a roof over it, including a tent, and is
20 designed to be occupied by people lodging therein at night.

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

24 (4) Residence. – A dwelling in which a person resides either temporarily or
25 permanently or is visiting as an invited guest.

26 (b) A person is presumed to have held a reasonable fear of imminent peril of death or
27 great bodily harm to himself or herself or another when using defensive force that is intended
28 or likely to cause death or great bodily harm to another if:

29 (1) The person against whom the defensive force was used was in the process of
30 unlawfully and forcefully entering, or had unlawfully and forcibly entered, a
31 dwelling or residence, or if that person had removed or was attempting to
32 remove another against that person's will from the dwelling or residence; and



- 1 (2) The person who uses defensive force knew or had reason to believe that an
2 unlawful and forcible entry or unlawful and forcible act was occurring or
3 had occurred.
- 4 (c) The presumption set forth in subsection (b) of this section does not apply if:
- 5 (1) The person against whom the defensive force is used has the right to be in or
6 is a lawful resident of the dwelling or residence, such as an owner or lessee,
7 and there is not an injunction for protection from domestic violence or a
8 written pretrial supervision order of no contact against that person.
- 9 (2) The person sought to be removed from the dwelling or residence is a child or
10 grandchild, or is otherwise in the lawful custody or under the lawful
11 guardianship of, the person against whom the defensive force is used.
- 12 (3) The person who uses defensive force is engaged in, attempting to escape
13 from, or using the dwelling or residence to further any criminal offense
14 which involves the use or threat of physical force or violence against any
15 individual.
- 16 (4) The person against whom the defensive force is used is a law enforcement
17 officer who enters or attempts to enter a dwelling or residence in the lawful
18 performance of his or her official duties, and the officer identified himself or
19 herself in accordance with any applicable law or the person using force knew
20 or reasonably should have known that the person entering or attempting to
21 enter was a law enforcement officer.
- 22 (d) A person who unlawfully and by force enters or attempts to enter a person's
23 dwelling or residence is presumed to be doing so with the intent to commit an unlawful act
24 involving force or violence.
- 25 (e) A person who uses force as permitted by this section is justified in using such force
26 and is immune from criminal prosecution and civil action for the use of such force, unless the
27 person against whom force was used is a law enforcement officer, who was acting in the
28 performance of his or her official duties, and the officer identified himself or herself in
29 accordance with any applicable law or the person using force knew or reasonably should have
30 known that the person was a law enforcement officer."

31 **SECTION 2.** G.S. 14-51.1 is repealed.

32 **SECTION 3.** This act becomes effective December 1, 2009, and applies to
33 offenses committed on or after that date. Prosecutions for offenses committed before the
34 effective date of this act are not abated or affected by this act, and the statutes that would be
35 applicable but for this act remain applicable to those prosecutions.