

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

2

SENATE BILL 34
Judiciary II Committee Substitute Adopted 2/22/11

Short Title: The Castle Doctrine.

(Public)

Sponsors:

Referred to:

February 7, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE WHEN A PERSON MAY USE DEFENSIVE FORCE, INCLUDING
3 FORCE THAT IS INTENDED OR LIKELY TO CAUSE DEATH OR SERIOUS
4 BODILY HARM, AND TO CREATE A PRESUMPTION THAT A PERSON IS
5 PRESUMED TO HAVE HELD A REASONABLE FEAR OF IMMINENT PERIL OF
6 DEATH OR SERIOUS BODILY HARM IN CERTAIN CIRCUMSTANCES.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Article 14 of Chapter 14 of the General Statutes is amended by
9 adding the following new sections to read:

10 "**§ 14-51.2. Home, workplace, and motor vehicle protection; presumption of fear of death**
11 **or serious bodily harm.**

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

13 (1) Home. – A building or conveyance of any kind, to include its curtilage,
14 whether the building or conveyance is temporary or permanent, mobile or
15 immobile, which has a roof over it, including a tent, and is designed as a
16 temporary or permanent residence.

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

20 (3) Motor vehicle. – As defined in G.S. 20-4.01(23).

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

24 (b) The lawful occupant of a home, motor vehicle, or workplace is presumed to have
25 held a reasonable fear of imminent death or serious bodily harm to himself or herself or another
26 when using defensive force that is intended or likely to cause death or serious bodily harm to
27 another if both of the following apply:

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

33 (2) The person who uses defensive force knew or had reason to believe that an
34 unlawful and forcible entry or unlawful and forcible act was occurring or
35 had occurred.

36 (c) The presumption set forth in subsection (b) of this section does not apply in any of
37 the following circumstances:



1 (1) The person against whom the defensive force is used has the right to be in or
2 is a lawful resident of the home, motor vehicle, or workplace such as an
3 owner or lessee, and there is not an injunction for protection from domestic
4 violence or a written pretrial supervision order of no contact against that
5 person.

6 (2) The person sought to be removed from the home, motor vehicle, or
7 workplace is a child or grandchild or is otherwise in the lawful custody or
8 under the lawful guardianship of the person against whom the defensive
9 force is used.

10 (3) The person who uses defensive force is engaged in, attempting to escape
11 from, or using the home, motor vehicle, or workplace to further any criminal
12 offense that involves the use or threat of physical force or violence against
13 any individual.

14 (4) The person against whom the defensive force is used is a law enforcement
15 officer who enters or attempts to enter a home, motor vehicle, or workplace
16 in the lawful performance of his or her official duties, and the officer
17 identified himself or herself in accordance with any applicable law or the
18 person using force knew or reasonably should have known that the person
19 entering or attempting to enter was a law enforcement officer in the lawful
20 performance of his or her official duties.

21 (5) The person against whom the defensive force is used (i) has discontinued all
22 efforts to unlawfully and forcefully enter the dwelling or residence and (ii)
23 has exited the home, motor vehicle, or workplace.

24 (d) A person who unlawfully and by force enters or attempts to enter a person's home,
25 motor vehicle, or workplace is presumed to be doing so with the intent to commit an unlawful
26 act involving force or violence.

27 (e) A person who uses force as permitted by this section is justified in using such force
28 and is immune from civil or criminal liability for the use of such force, unless the person
29 against whom force was used is a law enforcement officer who was lawfully acting in the
30 performance of his or her official duties and the officer identified himself or herself in
31 accordance with any applicable law or the person using force knew or reasonably should have
32 known that the person was a law enforcement officer in the lawful performance of his or her
33 official duties.

34 (f) A lawful occupant within his or her home, motor vehicle, or workplace does not
35 have a duty to retreat from an intruder in the circumstances described in this section.

36 (g) This section is not intended to repeal or limit any other defense that may exist under
37 the common law.

38 **§ 14-51.3. Use of force in defense of person; relief from criminal or civil liability.**

39 (a) A person is justified in using force, except deadly force, against another when and to
40 the extent that the person reasonably believes that the conduct is necessary to defend himself or
41 herself or another against the other's imminent use of unlawful force. However, a person is
42 justified in the use of deadly force and does not have a duty to retreat in any place he or she has
43 the lawful right to be if either of the following applies:

44 (1) He or she reasonably believes that such force is necessary to prevent
45 imminent death or great bodily harm to himself or herself or another.

46 (2) Under the circumstances permitted pursuant to G.S. 14-51.2.

47 (b) A person who uses force as permitted by this section is justified in using such force
48 and is immune from civil or criminal liability for the use of such force, unless the person
49 against whom force was used is a law enforcement officer who was lawfully acting in the
50 performance of his or her official duties and the officer identified himself or herself in
51 accordance with any applicable law or the person using force knew or reasonably should have

1 known that the person was a law enforcement officer in the lawful performance of his or her
2 official duties."

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

4 **SECTION 3.** This act becomes effective December 1, 2011, and applies to
5 offenses committed on or after that date. Prosecutions for offenses committed before the
6 effective date of this act are not abated or affected by this act, and the statutes that would be
7 applicable but for this act remain applicable to those prosecutions.