

JAN 18 2008

A BILL FOR AN ACT

RELATING TO JUSTIFIABLE USE OF FORCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 703-304, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§703-304 Use of force in self-protection.** (1) Subject
4 to the provisions of this section and of section 703-308, the
5 use of force upon or toward another person is justifiable when
6 the actor believes that such force is immediately necessary for
7 the purpose of protecting [~~himself~~] the actor against the use of
8 unlawful force by the other person on the present occasion.

9 (2) The use of deadly force is justifiable under this
10 section if the actor believes that deadly force is necessary to
11 protect [~~himself~~] the actor against death, serious bodily
12 injury, kidnapping, rape, or forcible sodomy.

13 (3) Except as otherwise provided in subsections (4) and
14 (5) of this section, a person employing protective force may
15 estimate the necessity thereof under the circumstances as [~~he~~]
16 the person believes them to be when the force is used without
17 retreating, surrendering possession, doing any other act [~~which~~



1 he] that the person has no legal duty to do, or abstaining from
2 any lawful action.

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

5 (a) To resist an arrest [~~which~~] that the actor knows is
6 being made by a law enforcement officer, although the
7 arrest is unlawful; or

8 (b) To resist force used by the occupier or possessor of
9 property or by another person on [~~his~~] behalf [~~7~~] of
10 the occupier or possessor of property, where the actor
11 knows that the person using the force is doing so
12 under a claim of right to protect the property, except
13 that this limitation shall not apply if:

14 (i) The actor is a public officer acting in the
15 performance of [~~his~~] the duties of a public
16 officer or a person lawfully assisting [~~him~~] a
17 public officer therein or a person making or
18 assisting in a lawful arrest; or

19 (ii) The actor believes that such force is necessary
20 to protect [~~himself~~] the actor against death or
21 serious bodily injury.



1 (5) The use of deadly force is not justifiable under this
2 section if [:-

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

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

12 ~~(i) The actor is not obliged to retreat from his
13 dwelling or place of work, unless he was the
14 initial aggressor or is assailed in his place of
15 work by another person whose place of work the
16 actor knows it to be; and~~

17 ~~(ii) A public officer justified in using force in the
18 performance of his duties, or a person justified
19 in using force in his assistance or a person
20 justified in using force in making an arrest or
21 preventing an escape, is not obliged to desist
22 from efforts to perform his duty, effect the~~



1 ~~arrest, or prevent the escape because of~~
2 ~~resistance or threatened resistance by or on~~
3 ~~behalf of the person against whom the action is~~
4 ~~directed.~~

5 (6) The justification afforded by this section extends to
6 the use of confinement as protective force only if the actor
7 takes all reasonable measures to terminate the confinement as
8 soon as [he] the actor knows that [he] the actor safely can,
9 unless the person confined has been arrested on a charge of
10 crime."

11 SECTION 2. Section 703-305, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§703-305 Use of force for the protection of other**
14 **persons.** [~~(1)~~] Subject to the provisions of this section and
15 of section 703-310, the use of force upon or toward the person
16 of another is justifiable to protect a third person when:

17 ~~[(a)]~~ (1) Under the circumstances as the actor believes
18 them to be, the person whom the actor seeks to protect
19 would be justified in using such protective force; and

20 ~~[(b)]~~ (2) The actor believes that the actor's intervention
21 is necessary for the protection of the other person.

22 ~~(2) Notwithstanding subsection (1):~~



- 1 ~~(a) When the actor would be obliged under section 703-304~~
2 ~~to retreat, to surrender the possession of a thing, or~~
3 ~~to comply with a demand before using force in self-~~
4 ~~protection, the actor is not obliged to do so before~~
5 ~~using force for the protection of another person,~~
6 ~~unless the actor knows that the actor can thereby~~
7 ~~secure the complete safety of such other person; and~~
- 8 ~~(b) When the person whom the actor seeks to protect would~~
9 ~~be obliged under section 703-304 to retreat, to~~
10 ~~surrender the possession of a thing or to comply with~~
11 ~~a demand if the person knew that the person could~~
12 ~~obtain complete safety by so doing, the actor is~~
13 ~~obliged to try to cause the person to do so before~~
14 ~~using force in the person's protection if the actor~~
15 ~~knows that the actor can obtain the other's complete~~
16 ~~safety in that way; and~~
- 17 ~~(c) Neither the actor nor the person whom the actor seeks~~
18 ~~to protect is obliged to retreat when in the other's~~
19 ~~dwelling or place of work to any greater extent than~~
20 ~~in the actor's or the person's own.] "~~

21 SECTION 3. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



1 SECTION 4. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before its effective date.

4 SECTION 5. This Act shall take effect upon its approval.

5

INTRODUCED BY:

Mike Hubbard



Report Title:

Justifiable Use of Force

Description:

Amends chapter 703, HRS, to remove requirement to retreat or surrender possession of a thing before the use of force is considered justifiable.

