
A BILL FOR AN ACT

RELATING TO THE USE OF FORCE IN SELF-PROTECTION.

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

1 SECTION 1. The legislature finds that it is proper for
2 law-abiding persons to protect themselves, their families, and
3 others from attackers. A person's ability to protect should not
4 require the person to needlessly retreat in the face of
5 intrusion or attack.

6 The legislature further finds that duty to retreat has not
7 been absolute in the State. At common law, the castle doctrine
8 allows a person to use force, including deadly force, to protect
9 the person's home against an intruder without having to consider
10 options, such as leaving the home to avoid a threat or
11 confrontation. Additionally, since the adoption of the Hawaii
12 Penal Code in 1972, persons in the State have enjoyed an
13 expanded version of the castle doctrine that allows them to
14 protect their places of work, in addition to their homes.

15 The legislature additionally finds that a majority of
16 states have significantly scaled back the duty to retreat. As
17 of 2022, twenty-eight states have statutorily expressed that



1 persons do not have a duty to retreat from an attacker. An
2 additional eight states have scaled back the duty to retreat
3 through judicial decisions or jury instructions.

4 The legislature further finds that any action taken to
5 scale back the duty to retreat does not expand or restrict
6 access to firearms, nor expand or restrict the ability to carry
7 firearms in public. Those issues are independent of whether a
8 person should be able to protect oneself without requiring the
9 person to needlessly retreat or surrender one's property.

10 Accordingly, the purpose of this Act is to repeal the duty
11 to retreat or take over evasive action with respect to the use
12 of deadly force as a justifiable means of self-protection.

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

15 "**§703-304 Use of force in self-protection.** (1) Subject
16 to the provisions of this section and of section 703-308, the
17 use of force upon or toward another person is justifiable when
18 the actor believes that such force is immediately necessary for
19 the purpose of protecting [~~himself~~] oneself against the use of
20 unlawful force by the other person on the present occasion.



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

5 (3) Except as otherwise provided in subsections (4) and
6 (5) of this section, a person employing protective force may
7 estimate the necessity thereof under the circumstances as [~~he~~]
8 the person believes them to be when the force is used without
9 retreating, surrendering possession, doing any other act which
10 [~~he~~] the person has no legal duty to do, or abstaining from any
11 lawful action.

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

14 (a) To resist an arrest which the actor knows is being
15 made by a law enforcement officer, although the arrest
16 is unlawful; or

17 (b) To resist force used by the occupier or possessor of
18 property or by another person on [~~his~~] the person's
19 behalf, where the actor knows that the person using
20 the force is doing so under a claim of right to



H.B. NO. 795

1 protect the property, except that this limitation
2 shall not apply if:

3 (i) The actor is a public officer acting in the
4 performance of [~~his~~] the public officer's duties
5 or a person lawfully assisting [~~him~~] the public
6 officer therein or a person making or assisting
7 in a lawful arrest; or

8 (ii) The actor believes that such force is necessary
9 to protect [~~himself~~] oneself against death or
10 serious bodily injury.

11 (5) The use of deadly force is not justifiable under this
12 section if[+]

13 ~~(a) The] the actor, with the intent of causing death or~~
14 ~~serious bodily injury, provoked the use of force~~
15 ~~against [~~himself~~] oneself in the same encounter[+ or~~

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

1 ~~(i) The actor is not obliged to retreat from his~~
2 ~~dwelling or place of work, unless he was the~~
3 ~~initial aggressor or is assailed in his place of~~
4 ~~work by another person whose place of work the~~
5 ~~actor knows it to be; and~~

6 ~~(ii)]~~.

7 (6) A public officer justified in using force in the
8 performance of [~~his~~] the public officer's duties, or a person
9 justified in using force in [~~his~~] the person's assistance or a
10 person justified in using force in making an arrest or
11 preventing an escape, is not obliged to desist from efforts to
12 perform [~~his~~] the person's duty, effect the arrest, or prevent
13 the escape because of resistance or threatened resistance by or
14 on behalf of the person against whom the action is directed.

15 ~~[(6)]~~ (7) The justification afforded by this section
16 extends to the use of confinement as protective force only if
17 the actor takes all reasonable measures to terminate the
18 confinement as soon as [~~he~~] the actor knows that [~~he~~] the actor
19 safely can, unless the person confined has been arrested on a
20 charge of crime."



H.B. NO. 795

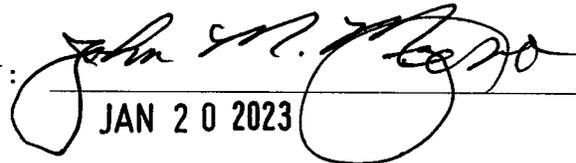
1 SECTION 3. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 4. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

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

7

INTRODUCED BY:


JAN 20 2023



H.B. NO. 795

Report Title:

Hawaii Penal Code; Justification; Self-Protection; Use of Force;
Deadly Force

Description:

Repeals the duty to retreat or take over evasive action with respect to the use of deadly force as a justifiable means of self-protection.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

