

ASSEMBLY BILL NO. 288—ASSEMBLYMEN MORTENSON, OHRENSCHALL; AIZLEY, ARBERRY, BOBZIEN, CHRISTENSEN, CLABORN, CONKLIN, GOEDHART, GOICOECHEA, GUSTAVSON, HAMBRICK, HARDY, KIHUEN, KOIVISTO, MCARTHUR, MUNFORD, OCEGUERA, SEGERBLOM AND SETTELMAYER

MARCH 11, 2009

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the use of force. (BDR 15-255)

FISCAL NOTE: Effect on Local Government: No. Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to the use of force; revising the provisions governing justifiable homicide; revising the provisions governing civil liability in actions involving the use of force; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Under existing case law, there is no duty to retreat before using deadly force if  
2 the person using deadly force is not the aggressor and reasonably believes that he is  
3 about to be killed or seriously injured. (*Culverson v. State*, 106 Nev. 484 (1990))  
4 **Section 1** of this bill provides that under the defense of justifiable homicide, there  
5 is no duty to retreat if the person using deadly force: (1) is not the aggressor; (2) has  
6 a right to be present at the location where deadly force is used; and (3) is not  
7 engaged in criminal activity at the time deadly force is used. **Section 1** also revises  
8 the definition of “justifiable homicide” to include specifically the killing of a  
9 person in defense of a motor vehicle or in defense against any person who  
10 manifestly intends and endeavors to enter the motor vehicle of another for the  
11 purpose of assaulting a person who is in the motor vehicle. (NRS 200.120)

12 **Section 2** of this bill amends existing law, which provides that a killing is  
13 justifiable if the circumstances were sufficient to excite the fears of a reasonable  
14 person, and the party killing really acted under the influence of those fears and not  
15 in a spirit of revenge, by establishing a presumption that the killing is justifiable  
16 under that standard if the party killing: (1) knew or had reason to believe that the  
17 person who was killed was unlawfully and with force entering, or attempting to  
18 enter unlawfully and with force, the occupied habitation, property or place of



19 business or employment of another person; (2) knew or had reason to believe that  
20 the person who was killed was committing or attempting to commit a felony; and  
21 (3) did not provoke the person who was killed. (NRS 200.130)

22 Existing law provides that in a civil action brought by or on behalf of a person  
23 against whom force which is intended or likely to cause death or bodily injury was  
24 used: (1) there is a presumption that the person who used such force had a  
25 reasonable fear of imminent death or bodily injury to himself or another person if  
26 the person against whom such force was used was committing burglary or invasion  
27 of the home; and (2) that presumption must be overcome by clear and convincing  
28 evidence to the contrary for the civil action to be maintained. (NRS 41.095) **Section**  
29 **3** of this bill extends that presumption to circumstances in which the person who  
30 used such force was in his motor vehicle and the other person was committing  
31 grand larceny of the motor vehicle with the use or threatened use of a deadly  
32 weapon. **Section 3** also enacts a provision, based upon Texas law, which provides  
33 that a person is immune from civil liability for using force which is intended or  
34 likely to cause death or bodily injury if the person was justified in using such force  
35 under the applicable provisions of Nevada criminal law. (Texas Civil Practice and  
36 Remedies Code, § 83.001)

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 200.120 is hereby amended to read as follows:  
2 200.120 **1.** Justifiable homicide is the killing of a human  
3 being in necessary self-defense, or in defense of habitation, property  
4 , *including, without limitation, a motor vehicle*, or person, against  
5 one who manifestly intends ~~to~~ or endeavors, by violence or surprise,  
6 to commit a felony, or against any person or persons who manifestly  
7 intend and endeavor, in a violent, riotous, tumultuous or  
8 surreptitious manner, to enter the habitation *or motor vehicle* of  
9 another for the purpose of assaulting or offering personal violence to  
10 any person dwelling or being therein.

11 **2.** *A person is not required to retreat before using deadly*  
12 *force as provided in subsection 1 if the person:*

13 *(a) Is not the aggressor;*

14 *(b) Has a right to be present at the location where deadly force*  
15 *is used; and*

16 *(c) Is not engaged in criminal activity at the time deadly force*  
17 *is used.*

18 **3.** *As used in this section, "motor vehicle" means every*  
19 *vehicle which is self-propelled.*

20 **Sec. 2.** NRS 200.130 is hereby amended to read as follows:

21 200.130 **1.** A bare fear of any of the offenses mentioned in  
22 NRS 200.120, to prevent which the homicide is alleged to have been  
23 committed, ~~[shall not be]~~ *is not* sufficient to justify the killing. It  
24 must appear that the circumstances were sufficient to excite the



1 fears of a reasonable person ~~[ ]~~ and that the party killing really acted  
2 under the influence of those fears and not in a spirit of revenge.

3 *2. It is presumed that the circumstances were sufficient to*  
4 *excite the fears of a reasonable person and that the party killing*  
5 *really acted under the influence of those fears and not in a spirit*  
6 *of revenge if the party killing:*

7 *(a) Knew or had reason to believe that the person who was*  
8 *killed was unlawfully and with force entering, or attempting to*  
9 *enter unlawfully and with force, the occupied habitation, property,*  
10 *including, without limitation, a motor vehicle, or place of business*  
11 *or employment of another person;*

12 *(b) Knew or had reason to believe that the person who was*  
13 *killed was committing or attempting to commit a felony; and*

14 *(c) Did not provoke the person who was killed.*

15 *3. As used in this section, "motor vehicle" means every*  
16 *vehicle which is self-propelled.*

17 **Sec. 3.** NRS 41.095 is hereby amended to read as follows:

18 41.095 1. For the purposes of NRS 41.085 and 41.130, any  
19 person who uses ~~[, while]~~ :

20 *(a) While* lawfully in his residence , ~~[or]~~ in transient lodging ~~[ ]~~  
21 *or in a motor vehicle that is not his residence*, force which is  
22 intended or likely to cause death or bodily injury is presumed to  
23 have had a reasonable fear of imminent death or bodily injury to  
24 himself or another person lawfully in the residence , ~~[or]~~ transient  
25 lodging *or motor vehicle* if the force is used against a person who is  
26 committing burglary , ~~[or]~~ invasion of the home *or grand larceny of*  
27 *the motor vehicle with the use or threatened use of a deadly*  
28 *weapon* and the person using the force knew or had reason to  
29 believe that burglary , ~~[or]~~ invasion of the home *or grand larceny of*  
30 *the motor vehicle with the use or threatened use of a deadly*  
31 *weapon* was being committed. An action to recover damages for  
32 personal injuries to or the wrongful death of the person who  
33 committed burglary , ~~[or]~~ invasion of the home *or grand larceny of*  
34 *the motor vehicle with the use or threatened use of a deadly*  
35 *weapon* may not be maintained against the person who used such  
36 force unless the presumption is overcome by clear and convincing  
37 evidence to the contrary.

38 *(b) Force which is intended or likely to cause death or bodily*  
39 *injury is immune from civil liability in an action to recover*  
40 *damages for personal injuries to or the wrongful death of a person*  
41 *against whom such force was used if the use of such force was*  
42 *justified under the applicable provisions of chapter 200 of NRS*  
43 *relating to the use of such force.*

44 2. As used in this section ~~[, "residence"]~~ :



1       (a) *“Deadly weapon” has the meaning ascribed to it in*  
2 *NRS 193.165.*

3       (b) *“Motor vehicle” means every vehicle which is*  
4 *self-propelled.*

5       (c) *“Residence”* means any house, room, apartment, tenement  
6 or other building, vehicle, vehicle trailer, semitrailer, house trailer or  
7 boat designed or intended for occupancy as a residence.

