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| LFC Requester: | |
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AGENCY BILL ANALYSIS
2017 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original Amendment
Correction Substitute

Date Jan. 24, 2017
Bill No: HB 168

Sponsor: Rick Little
Short Use of Deadly Force
Title: Reasonable Belief

Agency Code: 264
Person Writing Gary Cade
Phone: 505-507-7752 Email cadeabq@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|------------------------------|------------------|
| FY17 | FY18 | | |
| | | | |
| | | | |

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------------|------------------|
| FY17 | FY18 | FY19 | | |
| | | | | |
| | | | | |

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY17 | FY18 | FY19 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| Total | | | | | | |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 168 would expand the Justifiable Homicide By Citizen statute to add, “use of force, including deadly force.” It would also add certain conditions that, if present, then their use of force would be presumed to be reasonable. In addition to believing that the use of force, including deadly force, was necessary the person knew or had reason to believe that a person against whom force was used against had: (a) unlawfully entered by force, or attempted to unlawfully enter by force, the person’s occupied habitation, vehicle or place of business or employment; (b) unlawfully and forcibly removed, or attempted to unlawfully and forcibly remove, the person’s spouse or family from the person’s habitation, vehicle or place of business or employment; or (c) was committing or attempting to commit a felony. In addition the bill would also require that the person using force did not provoke a person against whom force was used, and was not otherwise engaged in criminal activity.

The bill would also make some grammatical changes to the statute to make it gender neutral.

FISCAL IMPLICATIONS

Unknown.

SIGNIFICANT ISSUES

HB 168 would expand the justifiable homicide statute to include “use of force, including deadly force,” to apply to cases that do not result in a person’s death. It is also an attempt to codify conditions that would create a presumption that using force, including deadly force, against another person, even if the use of force resulted in death, was reasonable. The bill would establish a presumption that a person using force, including deadly force, acted reasonably if they “knew or had to reason to believe that the person against whom the deadly force was used...unlawfully and with force entered or attempted to enter unlawfully and with force the person’s occupied habitation, vehicle or place of business or employment.” It would also be applicable if a person against whom deadly force was used, “unlawfully and with force removed or was attempting to remove unlawfully and with force, the person, person’s spouse or family from the person’s habitation, vehicle or place of business or employment,” or “was committing or attempting to commit a felony.” The presumptions would only be available if the person using force, “did not provoke the person against whom the force was used,” and “was not otherwise engaged in criminal activity.”

Virtually all modern case law requires that the use of deadly force be reasonable with that

determination evaluated with special attention to the facts and circumstances of each particular case. See, e.g., Graham v. Connor, 471 U.S. 1 (1985). In the context of deadly force “reasonable” means that the actor be in fear of proportionate harm or force against him. See, State v. Johnson, 1998-NMCA-019, cert. den., Cf., Tennessee v. Garner, 471 U.S. 1 (1985) (A police officer may not use deadly force to apprehend a fleeing felon who does not pose a “significant threat” of death or great bodily injury to the officer or another.) HB 168 would establish a presumption that use of deadly force was reasonable, even if used against, for example, someone that pushed their way into a residence, car or business after they had been told to leave and would be prosecuted for trespass if they returned, or had been ejected for shoplifting, given a no trespass order and then forced their way back into a store. By virtually any standard use of deadly force would not be a proportional response.

The existing law covers most of the presumptions on justifiable homicide that the bill targets. Self-defense is now available to anyone charged with an unlawful killing if (1) they were put in fear by an apparent danger of immediate death or great bodily injury; (2) the killing resulted from that fear; and (3) a reasonable person in the same circumstances would have acted as the defendant did. See, e.g., State v. Anderson, 2016-NMCA-016, cert den., State v. Mantelli, 2002-NMCA-033, cert. den. and UJI 14-5171. Defense of habitation is also available and is virtually identical to self-defense. See, UJI 14-5190 and State v. Cardenas, 2016-NMCA-042, cert. den. It has both a subjective standard that focusses on the perception of the defendant at the time of the incident and an objective standard that focusses on how a reasonable person in the same circumstances would have acted. Id. Instructions for self-defense (Anderson, Mantelli), and defense of habitation (Cardenas), are mandatory if there is evidence for them that could be decided in a defendant’s favor.

HB 168 does not clarify “force” as it is used in describing the type of entry and removal to support a presumption that the use of deadly force was reasonable. “Unlawful” is also a sweeping term that could apply to things as simple and mundane as trespass or more serious crimes. There is likewise no guidance regarding “provoke” and “was not otherwise engaged in criminal activity” to indicate what it might be appropriate to void a presumption that the person using deadly force acted reasonably. The bill uses the term “habitation” which is probably intended to refer to a person’s living quarters, instead of the more commonly used term of “dwelling.” See, e.g., Sects. 30-3-8, 30-7-4, 30-14-8, 30-16-3 and 30-16-4, NMSA 1978. It also refers to “occupied habitation” in one subparagraph but only “habitation” in another and does not indicate how the distinction should be interpreted.

HB 168, as drafted, states, “use of force, including deadly force” in its predicate but subsequently states, “against whom deadly force was used” in listing the circumstances in which the reasonableness presumption would apply. (Emphasis added.) The subparagraph which lists just the person, person’s spouse or family, would preclude application from actions based on protection of an un-related stranger or friend.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The existing law covers most of the presumptions on justifiable homicide that the bill targets.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS