



The New Law of Self Defense?

Author : John Rubin

Categories : [Uncategorized](#)

Tagged as : [defenses](#), [defensive force](#), [self-defense](#)

Date : August 17, 2011

[Editor's note: John is the author of The Law of Self-Defense in North Carolina, an in-depth analysis of North Carolina's approach to the use of defensive force. It's available for purchase [here](#).]

North Carolina law recognizes various circumstances in which a person may lawfully use force against the threat of harm. Through decades of decisions, the North Carolina appellate courts have recognized the right to defend oneself, other people, and one's home and property, among other interests, and have developed rules on when those rights apply and amount to a defense to criminal charges. New G.S. 14-51.2, 14-51.3, and 14-51.4 address several of the circumstances in which a person may use defensive force. The statutes restate the law in some respects and broaden it in others. The courts will have to examine their procedures closely to give effect to the new statutory language. The new statutes are part of [S.L. 2011-268](#) (H 650), which applies to offenses committed on or after December 1, 2011. (That legislation also revised several other statutes to expand the right to own, possess, and carry a gun, which Jeff discussed in a [previous post](#).)

For example, the new defensive-force statutes recognize the right to use deadly force against a forcible, unlawful intrusion into a motor vehicle. The courts therefore will need to develop new jury instructions to reflect this right. If faced with such a threat, a person often would have the right to use deadly force under existing doctrines as well—namely, the right to defend oneself and any other vehicle occupants and to prevent the commission of a dangerous felony. A person would have the right to raise these defenses and have the jury instructed on them, in addition to the new defense of motor vehicle, in light of the general principle that a person may rely on multiple defenses that arise from the evidence and on the statement in new G.S. 14-51.2(g) that the statute “is not intended to repeal or limit any other defense that may exist under the common law.”

To take another example, the courts will have to incorporate into their procedures the new statutory presumption of lawfulness, applicable to the use of deadly force against a forcible intrusion into a home, motor vehicle, or workplace. The law has allowed a person to use deadly force against such intrusions, but the courts will have to consider the new presumption in evaluating whether the State has offered sufficient evidence to withstand a motion to dismiss by the defendant and, in cases that go to the jury, will have to give appropriate instructions explaining the presumption. The following summary highlights the key provisions of the new statutes; it does not attempt to address all of the issues the courts will need to consider.

New G.S. 14-51.2 modifies defense of habitation, called defense of home in the statute; explicitly recognizes a comparable defense for the workplace; and adopts a new defense involving motor vehicles. All involve defending against forcible intrusions into those areas under the circumstances described in the statute. Most important, the statute creates a presumption of lawfulness in the sense that if a lawful occupant of a home, motor vehicle, or workplace uses deadly force against an intruder and meets the other conditions in the statute, the occupant is presumed to have held a reasonable fear of imminent death or serious bodily harm to himself, herself, or another. The statute states that the new presumption is rebuttable and does not apply in five detailed instances, as when “the person against whom the defensive force is used has the right to be in or is a lawful resident of the home, motor vehicle, or workplace, such as an owner or lessee, and there is not an injunction for protection from domestic violence

or a written pretrial supervision order of no contact against that person.” The act repeals G.S. 14-51.1, which modified the common law version of defense of home to allow deadly force to terminate as well as prevent entry by an intruder. Repealed G.S. 14-51.1 also stated that a person has no duty to retreat from an intruder into the home. New G.S. 14-51.2 restates these principles for defense of home, motor vehicle, and workplace cases.

New G.S. 14-51.3 addresses the right to use deadly and nondeadly force to defend oneself and others. The statute appears to track the courts’ approach to these rights in most respects, but it may introduce new principles or at least clarify existing ones. For example, the statute states that a person is justified in using deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if the person reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself, herself, or others. The statute does not limit this principle to cases involving a home, motor vehicle, or workplace. Under current law, a person has no duty to retreat in comparable circumstances (that is, when a person is faced with a felonious assault), but the statute’s express statement of the principle may require the court to instruct the jury about it in all cases.

New G.S. 14-51.4 describes the circumstances in which a person is not entitled to rely on the defenses in new G.S. 14-51.2 and G.S. 14-51.3—for example, when a person is the aggressor by initially provoking the use of force against himself or herself. Again, these circumstances are similar in many respects to those recognized under current law, but differences exist, requiring close comparison of the statute to existing doctrines.

Over the next few weeks I will be working on a longer bulletin about the implications of the new statutes for defensive force cases. If you have any thoughts about the changes, please let me know.