The New Law of Self-Defense? The Impact of Statutory Changes in 2011

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I. Evolution of S.L. 2011-268 (H 650)

A. Four different bills addressing defensive force were introduced during the 2011 legislative session. The first three were introduced in February 2011. The last, the one eventually enacted, was introduced in April 2011. Each is described in the order introduced.

- S 34: The initial edition of this bill was about the castle doctrine only; the second edition added provisions on defense of person, including a "stand your ground" provision. The bill passed the Senate and was referred to a House committee.
- H 52: This bill was identical to S 34 and concerned the castle doctrine only. It was referred to a House committee.
- H 74: This bill included the castle doctrine and defense of person, including a "stand your ground" provision. It was referred to a House committee.
- H 650: The initial edition of this bill was about expanded gun rights. The second edition added provisions on the castle doctrine and defense of person, including a "stand your ground" provision. The substance of the defensive force provisions were comparable to the bills introduced earlier in the session. Subsequent editions made minor changes to the defensive-force provisions. The bill was enacted as S.L. 2011-268, *effective for offenses committed on or after December 1, 2011.*

B. The Trayvon Martin/George Zimmerman case brought attention to Florida's defensive force statutes and their similarities and dissimilarities to North Carolina law. Title XLVI, Chapter 776, Justifiable Use of Force, of the Florida Statutes includes provisions on the castle doctrine and defense of person, including a "stand your ground" provision. The changes were enacted by 2005 Fla. Laws 27 (S 436). North Carolina's statutes are comparable to the Florida law in many, although not all, respects.

Differences between the North Carolina and Florida law include the following:

- In the defense of person provisions, Florida law explicitly states that a person may stand his or her ground and meet force with force, including deadly force when justified by the circumstances, and has no duty to retreat. North Carolina's new defense of person provisions do not use the terms "stand your ground," but they do state that a person has the right to use deadly force when permitted in the circumstances described in the statute and has no duty to retreat. The difference in terminology may not be legally significant. According to an analysis of the proposed legislation by the Research Division of the General Assembly, the new defense of person statute is a "stand your ground" provision. Analysis of PCS [Proposed Committee Substitute] to First Edition of House Bill 650: Amend Various Gun

Laws/Castle Doctrine Bill from Kory Goldsmith, Committee Counsel, to House Judiciary Subcommittee, at 2 (June 1, 2011) (pertinent portion attached).

- The Florida law includes a provision explicitly prohibiting a law enforcement agency from arresting a person for using force unless the agency determines that there is probable cause that the force used was unlawful. FLA. STAT. § 776.032(2). North Carolina law does not contain an explicit provision to that effect. In both homicide and assault prosecutions in North Carolina, the State has the burden of proving that a defendant unlawfully used force because lack of justification is an element of those offenses. Thus, the State has the burden of proof on the unlawfulness of defensive force; however, the extent to which North Carolina law enforcement officers (and magistrates) do or should take that burden into account in making charging decisions is not as clear. *See generally* Jeff Welty, *Two Thoughts about the Trayvon Martin/George Zimmerman Case*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Mar. 28, 2012), (suggesting that the lawfulness of defensive force, being an affirmative defense, must be a slam dunk for it to be considered at the charging stage; discussing cases from other jurisdictions).
- The Florida legislation includes several recitals ("whereas" clauses preceding the statutory changes) indicating the legislature's reasons for acting, including that "persons residing in or visiting this state have a right to expect to remain unmolested within their homes or vehicles" and "no person or victim of crime should be required to surrender his or her personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack." 2005 Fla. Laws 27 (S 436). North Carolina's legislation does not contain recitals.

II. Relationship to Common-Law Rights

A. The new North Carolina statutes do not fully explain their impact on common-law principles of defensive force. G.S. 14-51.2(g), a part of the new North Carolina statute on defense of home, workplace, and motor vehicle, states: "This section [G.S. 14-51.2] is not intended to repeal or limit any other defense that may exist under the common law." G.S. 14-51.3, which addresses defense of person (self-defense and defense of others), does not specifically refer to its impact on common law rights.

B. For the specific defensive-force defenses covered by the new statutes, the statutes appear to establish the basic rules for those defenses. Because of their brevity, however, the statutes do not address all of the potential issues that may arise in cases in which those defenses would apply. Therefore, the General Assembly may have intended for North Carolina's courts to continue to look to common law principles to apply and supplement the general statutory rules.

C. For defensive-force defenses *not* specifically covered by the new statutes, the statutes do not appear to eliminate existing defenses—for example, defense against sexual assault, defense of property, etc. *See, e.g.,* John Rubin, THE LAW OF SELF-DEFENSE (hereinafter THE LAW OF SELF-DEFENSE)

§ 4.2 (Variations on Self-Defense: Against Sexual Assault); § 5.3 (Other Defensive-Force Defenses: Defense of Property) (UNC Sch. of Gov't 1996). Thus, a person would still have the right to use defensive force in those instances and could rely on those defenses in the trial of a criminal case. *See generally* THE LAW OF SELF-DEFENSE § 8.4(c) (observing that trial judge must instruct jury on each defensive-force defense supported by the evidence).

D. For the reasons in B. and C., above, a defendant should still be able to rely on imperfect self-defense in a homicide case, which reduces murder to voluntary manslaughter. G.S. 14-51.3(a), which addresses defense of person, describes the circumstances in which a person is "justified" in using deadly force—that is, when the use of deadly force is lawful. G.S. 14-51.3(b) confirms that the new statute addresses the circumstances in which a person has a complete defense to prosecution, stating that a defendant who meets the requirements of subsection (a) is immune from civil and criminal liability. G.S. 14-51.4, which describes the circumstances in which a person loses the right to use defensive force, likewise refers to the "justification" in G.S. 14-51.3. These provisions establish the basic rules for a complete defense and do not indicate a legislative intent to repeal the partial common-law defense of imperfect self-defense.

III. Defense of Home, Workplace, and Motor Vehicle

A. G.S. 14-51.2 covers three defenses. It codifies the defense of home, also called defense of habitation or the castle doctrine; explicitly recognizes a defense of workplace; and creates a new defense of motor vehicle. These defenses share the following components.

- A lawful occupant
- of a home, workplace, or motor vehicle
- is presumed to have had a reasonable fear of imminent death or serious bodily harm to self or another
- when using defensive force likely to cause death or serious bodily harm if both of the following apply
  - the person against whom the defensive force was used was unlawfully or forcibly entering or had unlawfully and forcibly entered or that person had removed or was attempting to remove another person against the other person's will, and
  - the occupant knew or had reason to believe an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.
- except
  - the presumption is rebuttable and does not apply in the circumstances in G.S. 14-51.2(c), which describes exceptions specific to defense of home, workplace, or motor vehicle, and
  - the defenses in G.S. 14-51.2 on defense of home, workplace, or motor vehicle and G.S. 14-51.3 on defense of person are not available in the circumstances in G.S. 14-51.4, which describes general exceptions to the defenses.

Each of these components is discussed below

B. The "lawful occupant" requirement for these defenses does not represent a change in North Carolina law. THE LAW OF SELF-DEFENSE, § 5.4, at 131. Its inclusion as a requirement for the new defense of motor vehicle shows that the vehicle must be occupied for a person to use deadly force. The statute does not authorize deadly force in response to the entry or theft of an unoccupied vehicle that does not threaten death or great bodily harm; defensive force in those circumstances would be governed by the common-law right to use nondeadly force in defense of personal property. THE LAW OF SELF-DEFENSE, § 5.3(a), at 125–26.

C. G.S. 14-51.2(a) defines "home," "workplace," and "motor vehicle."

- To constitute a "home," the structure must have a roof. The term "home" includes the curtilage. It is not clear whether this definition represents an expansion of defense of habitation. *See State v. Blue,* 356 N.C. 79, 89 (2002) (holding for defense of habitation that "whether a porch, deck, garage, or other appurtenance attached to a dwelling is within the home or residence . . . is a question of fact best left for the jury's determination based on the evidence presented at trial"); *accord State v. Withers,* 179 N.C. App. 249 (2006).
- The explicit inclusion of "workplace" in the statute establishes that North Carolina recognizes a defense of workplace, comparable to defense of home. THE LAW OF SELF-DEFENSE, § 5.4(b)(2), at 131.
- Defense of "motor vehicle" is new. As with defense of home and defense of workplace, a defendant may raise this new defense and any other defenses that apply under the circumstances. For example, if a person uses deadly force to defend against a carjacking, the person potentially could rely on the new defense of motor vehicle as well as self-defense, defense of others if other people were in the vehicle, and defense against a dangerous felony.

D. The new statutory "presumption" raises a number of issues.

- The provisions creating the presumption do not themselves state that a person who meets the requirements for the presumption is justified in using deadly force; however, other provisions show that a person has a complete justification if the requirements of new G.S. 14-51.2 are met. New G.S. 14-51.2(e) states that a person "who uses force as permitted by this section [G.S. 14-51.2] is justified in using such force and is immune from civil or criminal liability for the use of such force." New G.S. 14-51.3 on the use of deadly force, although principally about defense of person, states that a person is justified in using deadly force "under the circumstances permitted pursuant to G.S. 14-51.2." And, new G.S. 14-51.4 lists the circumstances in which the "justification described in G.S. 14-51.2" is not available, indicating that a person who meets the requirements of G.S. 14-51.2 and is not disqualified by G.S. 14-51.4 has a complete defense.
- Under preexisting law on defense of habitation, as a condition of using deadly force the defendant must have had a reasonable belief that (1) the person was forcibly entering or

had forcibly entered the habitation, (2) the person had the intent to cause death or great bodily harm or to commit a felony, and (3) the degree of force used was necessary to prevent or terminate the forcible entry. The new presumption effectively eliminates the second reasonable belief requirement if the presumption's preconditions are met and the presumption is not rebutted, discussed further under H., below. *See also* Analysis of PCS [Proposed Committee Substitute] to First Edition of House Bill 650: Amend Various Gun Laws/Castle Doctrine Bill from Kory Goldsmith, Committee Counsel, to House Judiciary Subcommittee, at 1–2 (June 1, 2011) (pertinent portion attached) (observing that the new presumption in G.S. 14-51.2(b) eliminates any burden on the person who used defensive force to prove that he or she had a reasonable fear of imminent death or serious bodily harm). [Contrary to the committee report, North Carolina law did not place the burden on the defendant to prove the justifiable use of defensive force; nevertheless, the committee report correctly notes that the new presumption affects the application of second reasonable belief requirement.] The statute maintains the first reasonable belief requirement via G.S. 14-51.2(b)(2), which states that the defendant must have reasonably believed that an unlawful and forcible entry or an unlawful or forcible act was occurring or had occurred; but, the statute softens this requirement by creating a second presumption, in G.S. 14-51.1(d), that a person who unlawfully and forcibly enters or attempts to do so is presumed to intend to commit an unlawful, forcible act. The statute does not contain an explicit provision on the third reasonable belief requirement about the degree of force used but it may still be a requirement for the defense. G.S. 14-51.2(c)(5) states that the presumption of a reasonable fear of imminent death or serious bodily harm does not apply if the intruder has discontinued all efforts to unlawfully and forcibly enter *and* has exited. This provision establishes an outer limit on the use of deadly force. There may be other circumstances before an intruder has exited in which the intruder ceases to pose a threat and deadly force is not reasonably necessary and is not justified—for example, if the intruder has been incapacitated while still in the structure.

- The new presumption refers to a reasonable fear of imminent death or "serious bodily harm." Cases generally use the term "great bodily harm," but the difference in terminology may have no legal significance.

E. Assuming the other requirements are satisfied, a person may use deadly force to prevent the removal or attempted removal of another. In light of the wording of the statute, the removal must be by someone who is unlawfully and forcibly entering or has unlawfully and forcibly entered.

F. The legislation repeals G.S. 14-51.1, which modified the then-existing statute on defense of habitation allowing deadly force to terminate as well as prevent entry by an intruder. The LAW OF SELF-DEFENSE § 5.4(a), at 128. New G.S. 14-51.2(b) incorporates this principle by making defense of home, workplace, and motor vehicle applicable when a person is in the process of unlawfully and forcibly entering or when a person "had unlawfully and forcibly entered."

G. Repealed G.S. 14-51.1 stated that a person has no duty to retreat from an intruder into the

home. New G.S. 14-51.2(f) retains this principle by stating that a person does not have a duty to retreat in the home, workplace, or motor vehicle in the circumstances described in G.S. 14-51.2.

H. G.S. 14-51.2(c) contains five specific exceptions to defense of home, workplace, and motor vehicle, stating that the presumption in G.S. 14-51.2(b) "shall be rebuttable and does not apply in any of the following circumstances:"

- The person against whom the defensive force is used has a right to be in or is a lawful resident and there is not a no-contact order against that person. This exception reinforces the basic requirement of the defense that the entry defended against be unlawful.
- The person sought to be removed is a child or grandchild or is otherwise in the lawful custody or guardianship of the person against whom defensive force is used. This exception reinforces the basic requirement of the defense that removal be unlawful.
- The person using defensive force is engaged in, attempting to escape from, or using the home, workplace, or motor vehicle to further a criminal offense that involves the use or threat of physical force or violence. This exception appears to be a variant of the aggressor doctrine, removing the statute as a complete defense if the occupant has acted in a way that would justify another person's use of force—for example, if a person forcibly entered a home to protect a person whom the occupant was unlawfully threatening with violence.
- The person against whom the defensive force is used is a law-enforcement officer or bail bondsman and (1) the officer or bail bondsman enters or attempts to enter in the lawful performance of official duties and (2) the person using defensive force knew or reasonably should have known that the person entering or attempting to enter was a law-enforcement officer or bail bondsman acting in the lawful performance of official duties. For the most part, the description of a person's rights against a law-enforcement officer is similar to the common-law principles governing defensive force against law-enforcement officers. *See generally* THE LAW OF SELF-DEFENSE § 5.5. Construed literally, however, the exception suggests that a person could use deadly force against a law-enforcement officer who is unlawfully and forcibly entering—for example, improperly entering without a warrant—even if the officer has identified himself or herself and does not present a threat of imminent death or great bodily harm. The common law does not allow the use of deadly force in that situation (*see* THE LAW OF SELF-DEFENSE § 5.5(b)(3), at 139–40), and the courts may be reluctant to construe the statute as permitting deadly force in that instance. Application of law-enforcement principles to bail bondsmen is new.

The presumption may be rebuttable in other circumstances than those specifically listed in G.S 14-51.2(c). Situations may arise in which the requirements for the presumption are met (that is, an intruder is unlawfully and forcibly entering a structure and an occupant reasonably believes that such an entry is occurring), but the occupant did not have a reasonable fear of imminent death or serious bodily harm and did not have the right to use deadly force (for example, the intruder was already incapacitated before the occupant used deadly force).

I. G.S. 14-51.4 contains general aggressor principles that constitute exceptions to the use of

defensive force. They are discussed in V.F. and G., below.

IV. Nondeadly Force in Defense of Person

A. The opening sentence of new G.S. 14-51.3 recognizes the right to use nondeadly force in defense of self or another. The statute provides that a person is justified in using nondeadly force:

- when and to the extent
- the person reasonably believes it necessary
- to defend himself, herself, or another
- against the other's imminent use of unlawful force
- except the defense does not apply in the circumstances in
  - G.S. 14-51.3(b), which describes exceptions to the use of deadly and nondeadly force in defense of person, and
  - G.S. 14-51.4, which describes general exceptions to the use of defensive force.

These components largely track the common-law right to use nondeadly force in defense of self and others. Significant features are discussed below.

B. The statement that a person may use force when *and* to the extent reasonably necessary maintains the requirement that the defensive force used may not be excessive.

C. The statement that a person may use force to defend "another," without any other limitation, appears to recognize that one person may defend another person without regard to whether the people have any relationship to each other.

D. The statute does not discuss whether a person has a duty to retreat before using nondeadly force against another's use of unlawful force. North Carolina cases have recognized, however, that a person does not have a duty to retreat in that instance and may "repel force by force and give blow for blow." *See* THE LAW OF SELF-DEFENSE § 3.5, at 84–85, and § 3.5(c)(1), at 90.

E. The exceptions to the use of nondeadly defensive force are described in V.F. and G., below.

V. Deadly Force in Defense of Person

A. G.S. 14-51.3 recognizes the right to use deadly force in defense of self or another. The statute provides that a person is justified in using deadly force:

- without retreating in any place where a person has a lawful right to be
- if the person reasonably believes such force is necessary
- to prevent imminent death or great bodily harm

- to himself, herself, or another
- except the defense does not apply in the circumstances in
  - G.S. 14-51.3(b), which describes exceptions to the use of deadly and nondeadly force in defense of person, and
  - G.S. 14-51.4, which describes general exceptions to the use of defensive force.

These components largely track the common-law right to use deadly force in defense of self and others. Significant features are discussed below.

B. By codifying the right not to retreat against a deadly threat, the statute appears to give the defendant a right to a specific instruction on that principle, akin to the no-duty-to-retreat instruction in cases involving self-defense in one's home or business. The right not to retreat applies anywhere a person has a lawful right to be, such as a public place; the statute does not require that the person be within a home, workplace, or motor vehicle.

C. The new statute provides that a person is justified in the use of deadly force if he or she reasonably believes "that such force" is necessary to prevent imminent death or great bodily harm. The statute does not require in a homicide case that the defendant reasonably have believed it necessary "to kill." The latter language has been used in jury instructions and has been the subject of considerable litigation. *See* THE LAW OF SELF-DEFENSE § 3.2(b)(3), (4).

D. The statement that a person may use force to defend "another," without any other limitation, appears to recognize that one person may defend another person without regard to whether the people have any relationship to each other.

E. G.S. 14-51.3(b) creates an exception to the right to use deadly or nondeadly force in defense of person in cases involving law-enforcement officers and bail bondsmen. A person may not use defensive force against a law-enforcement officer or bail bondsman if he or she is acting in the lawful performance of official duties and the person using defensive force knew or should have known that the person was a law-enforcement officer or bail bondsman acting in the lawful performance of official duties. The description of a person's rights against a law-enforcement officer appears similar to the common-law principles governing defensive force against law-enforcement officers. Thus, a person may use nondeadly force against the imminent use of unlawful force—for example, against an illegal warrantless arrest by an officer—and deadly force against the imminent use of unlawful force if the person reasonably believes such force is necessary to prevent imminent death or great bodily harm—for example, against deadly, excessive force by an officer. *See* THE LAW OF SELF-DEFENSE § 5.5; *compare* III.H., above (discussing potential application of exception to defense of home, workplace, and motor vehicle). Application of law-enforcement principles to bail bondsmen is new.

F. G.S. 14-51.4(1) contains a felony exception to defense of home, workplace, and motor vehicle (in G.S. 14-51.2) and to defense of self and others (in G.S. 14-51.3). The exception is a variation on common-law aggressor principles.

The subsection states that the justification in G.S. 14-51.2 and G.S. 14-51.3 is not available to a person who "was attempting to commit, committing, or escaping after the commission of a felony." This provision corresponds roughly with common-law aggressor principles in cases in which one person is committing a felony against a second person and the second person responds with defensive force. In that instance, the first person is the aggressor and does not have a justification defense if he or she responds forcibly to the second person's use of defensive force. In a homicide case, the first person still may have a claim of imperfect self-defense if the felony was not a life-threatening felony—if, for example, it was a felony larceny of property without the threat of injury—and the second person unjustifiably responded with deadly force. As indicated in II.D., above, the new statutes do not appear to foreclose claims of imperfect self-defense.

It is not clear whether the General Assembly intended to impose the felony disqualification when the felony is not the provocation for the other person's response—for example, if one person is illegally selling a controlled substance to another person, a felony, and the buyer uses physical force against the seller. Although the seller is engaged in illegal conduct, for which he or she could be prosecuted, the seller is not an "aggressor" in bringing on the buyer's unlawful use of force. The General Assembly may not have intended to take away the right of self-defense in that instance.

G. G.S. 14-51.4(2) specifically addresses aggressor principles. It provides that the justification in G.S. 14-51.2 and G.S. 14-51.3 is not available to a person who "[i]nitially provokes the use of force against himself or herself." The courts may construe the term "provokes" in the same manner as under the common law—for example, a mere exchange of heated words may not make a person an aggressor, but words "calculated and intended to provoke a fight" could make a person an aggressor. THE LAW OF SELF-DEFENSE § 3.3(d)(1), at 71–72.

G.S. 14-51.4(2) describes two instances when the initial aggressor regains the right to self-defense.

- Subdivision a. of G.S. 14-51.4(2)a. provides that a person who initially provokes another person to use force is justified in using defensive force if (1) the provoked person's use of force is so serious that the first person reasonably believes he or she is in imminent danger of death or serious bodily harm, (2) the first person has no reasonable means to retreat, and (3) the first person's use of deadly force was the only way to escape the danger. This provision clarifies an issue under North Carolina common law—that is, whether an aggressor *without murderous intent* (for example, a person who punched someone) could respond with deadly force if the second person responded so suddenly with deadly force (for example, the second person pulled out a gun and tried to shoot the first person) that the first person's only option was to use deadly force in self-defense (for example, the first person had to shoot immediately to avoid death or great bodily harm). *See* THE LAW OF SELF-DEFENSE § 3.3(d)(2), at 73–74; *but see State v. Cole,* 718 S.E.2d 424 (N.C. App. 2011) (unpublished) (siding with the line of cases finding that an aggressor without murderous

intent had to withdraw under the common law and dismissing contrary language from a conflicting line of cases). Under the new statute, the answer is now clear that the first person has the right to use deadly force in that instance, which means in both homicide and assault cases the defendant would have a complete defense. The new provision does not specifically address aggressors *with murderous intent*—for example, when one person unjustifiably uses deadly force against another person (for example, one person unjustifiably shoots at another person). The courts may continue to hold that an aggressor *with murderous intent* is disqualified from using defensive force until he or she withdraws as provided in subdivision b. of G.S. 14-51.4(2), below. Further, if the initial aggressor's unjustifiable use of force amounts to a felony, the person may lose the right to self-defense under G.S. 14-51.4(1), discussed in F., above.

- Subdivision b. of G.S. 14-51.4(2) is similar to the common-law withdrawal doctrine. It provides that an aggressor regains the right to self-defense if (1) the aggressor withdraws from physical contact from the person provoked, (2) the aggressor so indicates that desire, and (3) the provoked person continues or resumes the use of force. *See* THE LAW OF SELF-DEFENSE § 3.3(c)(2), at 70–71 (discussing withdrawal by aggressor with murderous intent) and § 3.3(d)(2), at 73–74 (discussing withdrawal by aggressor without murderous intent).

HOUSE BILL 650:
Amend Various Gun Laws/Castle Doctrine

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	June 1, 2011
Introduced by:	Reps. Hilton, LaRoque, Cleveland, Hastings	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition H650-CSRC-32		

SUMMARY: ***HB650 would amend numerous State laws related to the ownership and possession of guns. It would also expand the "Castle Doctrine" to apply to a motor vehicle or the workplace.***

CURRENT LAW: Castle Doctrine: The General Assembly enacted G.S. 14-51.1 (see attached) in 1994. Prior to the passage of the law, deadly force could only be used if the lawful occupant believed that an intruder attempting to unlawfully and forcibly enter the home might kill or inflict serious bodily injury. The common law rules of self-defense applied to someone who was already within the home. There was no right to use deadly force to protect property within the home, i.e., the lawful occupant believed that the intruder was going to commit some felony (e.g., theft) other than inflicting injury on an occupant.

G.S. 14-51.1 provides that deadly force may be used to prevent a forcible entry into the home or to terminate the unlawful entry if:

(1) The occupant reasonably apprehends that the intruder might kill or inflict serious bodily harm to the occupant or others; OR
(2) The occupant reasonably believes that the intruder intended to commit a felony in the home.

The determination is now a fact-based, subjective-objective analysis. Whether someone alleged to be an intruder had been attempting to, or had already, unlawfully and forcibly entered the home is a fact-based issue. The occupant must believe [subjective] that the intruder intended to kill or inflict serious bodily harm commit a felony. If so, is the belief reasonable [objective] under the circumstances?

BILL ANALYSIS: Castle Doctrine

Section 1 enacts **G.S. 14-51.2.** which would eliminate the "objective analysis" by stating that a person is presumed to have held a reasonable fear of death or bodily harm if both of the following apply:

1. The intruder was unlawfully and forcibly entering, or had unlawfully and forcibly entered the home, or removing or attempting to remove another from the (a question of fact), AND

2. The person using defensive force either knew or had reason to believe that an unlawful act was occurring or occurred..

The presumption stated above would be rebuttable if the location where the intrusion occurred is either a vehicle or workplace

The statute also:

- Provides definitions for terms, and states that there is a presumption that a person held a reasonable fear of death or great bodily harm to himself or another if the two requirements listed in the statute are met. This removes the burden from the person using defensive force to prove that their belief was reasonable.
- In a criminal case, if the defendant asserts the use of justifiable force as a defense to the charge, then the prosecutor has the burden of proof by producing evidence which disproves the defense beyond a reasonable doubt. In a civil action where the person who used defensive force was the defendant, the plaintiff would have the burden in a civil action to prove that the fear was not reasonable.
- The act contains a list of exceptions to the presumption. The exceptions include circumstances where the person against whom the defensive force is used was a lawful resident, and there was no court order providing for non-contact by that person; the person being removed was a child or grandchild, or was in the lawful custody of the person removing them; the person using defensive force was furthering a criminal offense that involved the use of force; a law enforcement officer was the person against whom the force was used; and the person against whom the force was used had discontinued efforts to unlawfully enter and had exited the dwelling.
- The act also provides that a person who unlawfully and by force enters, or attempts to enter the specified locations is presumed to be doing so with the intent to commit an unlawful act involving force or violence.
- A person who justifiably uses force as provided in the section is immune from criminal prosecution and civil action. An exception to this immunity is where the force was used against a law enforcement officer acting in the performance of duties and who identified himself or herself, or the person using force knew or reasonably should have known that the person was a law enforcement officer.
- The act provides that a person in any of the specified locations has no duty to retreat, which is consistent with the current law in relation to the home.

Section 1 enacts **G.S. 14-51.3 – Use of force in defense of person; relief from criminal or civil liability,** a "stand your ground" provision. A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that the conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if either of the following applies:

(1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another.

(2) Under the circumstances permitted above in G.S. 14 51.2. (use of force occurs in the home, motor vehicle, or workplace).

This provision does not contain a presumption, i.e., the use of defensive force will be just on what is considered objectively reasonable for the purposes of defense. The use of deadly force would come under the previous rules that applied in the home, i.e., the person must have a reasonable belief that the force was necessary to prevent

imminent death or serious bodily harm to himself or herself, or another. However, the use of deadly force to prevent a felony (which is in the current "castle doctrine" as it pertains to the home) is not included in the act. The provision contains a provision concerning immunity from civil or criminal liability that is similar to the one contained in G.S. 14-51.2, above.

Section 1 also enacts **G.S. 14-51.4 – Justification for defensive force not available** which provides that the justifications for the use of defensive force if the person using the force (1) was attempting to commit a crime or escaping after the commission of a crime; or (2) provoked the use of force. However, even if the person initially provoked the use of force, he or she may still use defensive force if certain conditions are met.

Section 2 repeals G.S. 14-51.1, the current law regarding use of deadly physical force against an intruder. The bill repeals the current "Castle Doctrine" statute.

CURRENT LAW: Possession and carrying concealed weapons

G.S. 14-269(a) makes it unlawful for any individual to willfully and intentionally carry concealed about their person any of the following: bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shurikin, stun gun, and other deadly weapon.

G.S. 14-269(a1) makes it unlawful to carry concealed a pistol or gun, unless it is on the individual's property, the individual has a concealed carry permit, or is a military permittee. Violation is a misdemeanor. The prohibition does not apply to ordinary pocket knives.

G.S. 14-269(b) provides that the prohibitions against carrying a concealed weapon do not apply to any of the following individuals:

1. Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties and acting under orders requiring them to carry arms and weapons.
2. Civil and law enforcement officers of the United States.
3. Officers and soldiers of the militia and the National Guard when called into actual service.
4. Officers of the State, or of any county, city, town, or company police agency charged with the execution of the laws of the State, when acting in the discharge of their official duties.
5. Sworn law-enforcement officers, when off-duty, provided that an officer does not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body.

The individuals listed in #1-5 above are also exempt from the following statutory provisions. Persons who hold a concealed carry permit are subject to these provisions.

- **G.S. 14-269.2.** Weapons on campus or other education property.
- **G.S. 14-269.3.** Carrying weapons into assemblies and establishments where alcoholic beverages are sold and consumed.
- **G.S. 14-269.4.** Weapons on State property and courthouses.
- **G.S. 14-277.2.** Weapons at parades, etc.