

Analysis of Senate Bill 88

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Subject: Analysis of Senate Bill 88
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Attachments: [35612982-State-v-Brown\[1\].pdf](#)

Dear Legislator From Hillsborough County:

Senate Bill 88 is expected to be up for a veto override vote. As the chief law enforcement officer in Hillsborough County working with police and prosecutors whose daily work is with criminal laws, I feel obligated to let you in on my analysis. The statute will factor into whether or not we prosecute for future violent events.

The present New Hampshire State statute R.S.A. 627:4, II Physical Force In Defense of a Person states that "a person is justified in using deadly force upon another person when he reasonably believes that such other person is about to use unlawful deadly force against the actor or third person..." The statute continues with exceptions including if the actor has the ability to safely retreat.

The present state of the statute includes what is popularly referred to as the "castle doctrine." That is a person is not required to choose retreating over using deadly force when that person is in their home or within the curtilage of their home. In other words the statute today supports confronting someone only if you are in your own house or yard. Outside their home and yard a person can defend themselves with deadly force if the option of avoiding the confrontation is unavailable.

Senate Bill 88 expands the area in which the statute will support confrontation to "anywhere he or she has a right to be." In other words a person will no longer be required by law to seek to avoid or escape the area where the conflict would take place. So if a bad guy with a baseball bat (deadly weapon having potential deadly force) threatens a victim, the victim need not just drive away, the potential victim can run-over (deadly force) the attempted perceived threatening person. That is just one of many deadly weapon versus deadly force combinations to contemplate. (For a true life example you have probably already seen the attached Court decision from the first state, Florida, to adopt this statute. Since the change Florida has tripled the number of homicides that by statute are now called justifiable. See link <http://www.tampabay.com/news/publicsafety/crime/article1128317.ece>:)

One stated reason for the change in the law is that a person should have the right to defend himself. However, today in N.H. a person is not expected to submit to violence. Even in a public place deadly force is authorized if a person reasonably believes deadly force is about to be used against him or even a third person. However, not if there is somewhere to move and avoid that deadly force he is concerned about. The proposed change only adds that a person can stand their ground. Thus we would be putting more importance on temporarily occupied territory than on human life. I disagree with such an appraisal of relative values because I put more value on human life than on the perceived need to occupy a public space. Compounding that poor value judgment is that one person is to be judge, jury and executioner in the blink of an eye.

Another stated reason for needing a change is that good guys should not have to run away from bad guys. Yet, how will we differentiate good guys from bad guys when one is dead and the other is the only person left to tell the story. An action that defines a good guy is to avoid confrontation. After all, don't we all believe a good guy instinctively avoids hurting others? If a bad guy kills a good guy will he

confess to a bad act or acting unreasonably? Doubtful, he will look for a way to avoid legal responsibility. Senate Bill 88 hands him a great defense- "I was reasonably for me to be scared by the dead guy." Today we, as the State of New Hampshire, retort: "you could have avoided killing him, therefore you are the bad guy." SB 88 will allow for someone to counter, "I had a right to be there and decided to kill him instead of retreating."

Senate Bill 88 would make prosecution of the above case either too difficult to pursue or add expense, and SB 88 discounts the value of human life compared to territorial rights in a public space. Therefore, I advise against SB 88 and support sustaining the Governor's veto of Senate Bill 88.

I apologize for not examining this issue earlier. There was a lot happening in the spring. The Hillsborough County Chiefs of Police expressed concern about this issue, but it was only one of many and the others were taken care of by the legislative process. The Veto Override is intended by the New Hampshire Constitution's framers to allow legislators to have another look at an issue. On vetoed bills a legislator has the opportunity to personally analyze an issue without relying on the committee system which handles the great mass of proposals. There is no dishonor in getting it right this time if you think the committee got it wrong in the first instance. Neither is it a partisan issue. In my years in the N.H. House, Republican Governor Sununu had several vetoes of legislation from a solidly Republican House and Senate. Some of those bills had passed the House on a voice vote.

Thank you,

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