

CHAPTER 381

AN ACT concerning certain grand jury charges and supplementing Title 2B of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.2B:22-9 Grand jury instruction in elements of justification for use of force by law enforcement officer.

1. a. In a grand jury proceeding where the use of force by a law enforcement officer has been introduced as an issue, the prosecutor shall instruct the grand jury in the elements of justification for the use of force in law enforcement pursuant to N.J.S.2C:3-7 and N.J.S.2C:3-9.

b. The prosecutor shall specifically charge the grand jury as follows:

(1) Subject to the limitations set out below, the use of force upon or toward the person of another is justifiable when a law enforcement officer is making an arrest or assisting in making an arrest and the officer reasonably believes that such force is immediately necessary to effect a lawful arrest.

(2) The use of force is not justifiable unless:

(a) The officer makes known the purpose of the arrest or reasonably believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and

(b) When the arrest is made under a warrant, the warrant is valid or reasonably believed by the officer to be valid.

(3) The use of deadly force is not justifiable unless:

(a) The officer effecting the arrest is authorized to act as a law enforcement officer; and

(b) The officer reasonably believes that the force employed creates no substantial risk of injury to innocent persons; and

(c) The officer reasonably believes that the crime for which the arrest is made was homicide, kidnapping, an offense under N.J.S.2C:14-2 or N.J.S.2C:14-3, arson, robbery, burglary of a dwelling, or an attempt to commit one of these crimes; and

(d) the officer reasonably believes:

(i) There is an imminent threat of deadly force to himself or to a third party; or

(ii) The use of deadly force is necessary to thwart the commission of a crime as set forth in subparagraph (c) of this paragraph; or

(iii) The use of deadly force is necessary to prevent an escape.

(4) The use of force to prevent the escape of an arrested person from custody is justifiable when the force could have been employed to effect the arrest under which the person is in custody under the provisions of this act. A correction officer or other person authorized to act as a law enforcement officer is, however, justified in using any force including deadly force, which he reasonably believes to be immediately necessary to prevent the escape of a person committed to a jail, prison, or other institution for the detention of persons charged with or convicted of an offense so long as the actor believes that the force employed creates no substantial risk of injury to innocent persons.

(5) The justification for the use of force afforded by this act is unavailable when:

(a) The officer's belief in the unlawfulness of the force or conduct against which he employs protective force or his belief in the lawfulness of an arrest which he endeavors to effect by force is erroneous; and

(b) His error is due to ignorance or mistake as to the provisions of the code, any other provisions of the criminal law or the law governing the legality of an arrest or search.

c. When the officer is justified under N.J.S.2C:3-3 to 2C:3-8 in using force upon or toward the person of another but he recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those sections is unavailable in a prosecution for such recklessness or negligence towards innocent persons.

2. This act shall take effect immediately.

Approved January 8, 2002.