



**AN BILLE UM AN DLÍ COIRIÚIL (COSAINN TÍ
CÓNAITHE) 2009**
CRIMINAL LAW (HOME DEFENCE) BILL 2009

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

Section

1. Short title.
 2. Definition.
 3. Presumption of reasonableness.
 4. Civil liability exemption.
 5. No defence to murder.
 6. Amendment to the Act of 1997.
 7. Consideration of extraneous factors.
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ACTS REFERRED TO

Non-Fatal Offences Against the Person Act 1997
Occupiers' Liability Act 1995

1997, No. 26
1995, No. 10



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CÓNAITHE) 2009

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BILL

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entitled

AN ACT TO ESTABLISH A PRESUMPTION THAT FORCE
USED AGAINST AN INTRUDER IS REASONABLE, TO
RELIEVE HOUSEHOLDERS OF ANY CIVIL LIABILITY
TO AN INTRUDER, TO AMEND THE NON-FATAL
10 OFFENCES AGAINST THE PERSON ACT 1997 AND TO
PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—This Act may be cited as the Criminal Law (Home Defence) Short title.
Act 2009.

15 2.—In this Act—

Definition.

“Act of 1995” means the Occupiers’ Liability Act 1995;

“Act of 1997” means the Non-Fatal Offences Against the Person
Act 1997;

“dwelling” includes—

20 (a) any building or part of a building being used as a dwelling,
in which one or more persons are ordinarily resident, or

(b) any caravan, mobile home or other structure in which one
or more persons are ordinarily resident;

“harm” has the meaning assigned to it in section 1 of the Act of 1997;

25 “member of family” has the meaning assigned to it in section 1 of
the Act of 1997;

“occupier” means—

(a) any person who could reasonably be considered to be resi-
dent in the dwelling, or

30 (b) any person who is present in the dwelling with the consent
and approval of an occupier;

“serious harm” has the meaning assigned to it in section 1 of the Act of 1997;

“trespasser” means a person who either enters a property unlawfully and remains within it, or a person who enters a property with a lawful license and whose presence becomes unlawful by violation of the express or implied terms of that license. 5

Presumption of reasonableness.

3.—(1) Where the occupier of a dwelling uses force in relation to a trespasser who is unlawfully present, and remains within the dwelling, the force used by the occupier shall, unless the contrary is proven, be presumed to have been reasonable. 10

(2) A person shall not be entitled to avail of the presumption under *subsection (1)* if he or she knows that the force is used against a member of An Garda Síochána acting in the course of his or her duty, or a person so assisting such a member.

Civil liability exemption.

4.—No liability in tort shall accrue to an occupier in respect of any harm, whether serious or not, caused by his or her actions in relation to a trespasser unless the force used is held by a court, considering all of the factors in *section 7* of this Act, to constitute unreasonable force. 15

No defence to murder.

5.—Nothing in this Act shall be used as a defence to murder. 20

Amendment to the Act of 1997.

6.—The Act of 1997 is amended in—

(a) section 1 by the insertion of the following definition:

“ ‘dwelling’ includes—

(a) any building or part of a building being used as a dwelling, in which one or more persons are ordinarily resident, or 25

(b) any caravan, mobile home or other structure in which one or more persons are ordinarily resident;”

(b) section 13 by the insertion of the following subsection (2): 30

“(2) The provisions of this section shall not apply where—

(a) the conduct referred to in subsection (1) takes place within a dwelling, and

(b) the person who engages in conduct referred to in subsection (1) is an occupier of that dwelling.” 35

(c) section 20 by the deletion of subsection (4) and substitution of the following:

“(4) The fact that a person retreated before using force shall be taken into account, in conjunction with other relevant evidence, in determining whether the use of force was reasonable, save where force was used within a dwelling by an occupier.” 40

7.—In any rebuttal of the presumption under *section 3* of this Act, where an occupier uses force against a trespasser, the fact that an occupier had—

Consideration of
extraneous factors.

- (a) a member of family or members of family, in the dwelling,
- (b) limited time within which to decide on a course of action,
- (c) limited options in defending against the trespasser, or
- (d) an honest belief that he or she had limited options in defending against the trespasser,

5 shall be taken into account, in conjunction with other relevant evidence, in determining whether the action or actions of the occupier or occupiers were reasonable.

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8.—Where a court is determining a sentence to be imposed on a trespasser for an offence committed while he or she was unlawfully present within the dwelling, the fact that the offence was committed while the person was so unlawfully present shall be treated for the purpose of determining the sentence as an aggravating factor and the court shall (except where the sentence for the previous offence is one of imprisonment for life or where the court considers that there are exceptional circumstances justifying its not doing so) impose a sentence that is greater than that which would have been imposed in the absence of such a factor.

Aggravating factors
in sentencing.

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2009
CRIMINAL LAW (HOME DEFENCE) BILL 2009**

EXPLANATORY MEMORANDUM

General

The purpose of this Bill is to provide for protection of home occupiers who confront intruders and/or trespassers within a dwelling. It creates a rebuttable presumption that any force used by an occupier to protect his home or family is reasonable, and comprises protection from civil liability for their actions in all circumstances.

The Bill removes any compulsion on occupiers to retreat from confronting intruders by amendment to section 20(4) of the Non-Fatal Offences Against the Person Act 1997, and provides a mechanism whereby a jury can consider the person's specific circumstances when coming to a decision as to the reasonableness or otherwise of the person's actions — including whether or not family members were present and the limited time within which the occupier had to decide on a course of action.

Provisions of Bill

Section 1 contains the short title of the Bill.

Section 2 defines the terms used in the Bill.

Section 3 creates a rebuttable presumption that defensive force used by a person against an intruder and *within* the dwelling, is reasonable force and specifically protects members of An Garda Síochána acting in the course of their duty.

Section 4 states that, where a trespasser is concerned, no occupier will be civilly liable for force used defensively, unless that force is held by a court to be unreasonable in the circumstances.

Section 5 ensures that no provision of this bill will be used as a defence to murder.

Section 6 amends the Non-Fatal Offences Against the Person Act 1997 by adding new definitions and ensuring that no occupier has a duty to retreat within his or her home.

Section 7 provides that any jury, considering if the force used by the householder was reasonable, will have to consider certain extraneous factors such as whether or not the occupier had family members in the dwelling, the circumstances of the occupier and how he or she perceived them, and how little time the occupier had to consider his or her options.

Section 8 provides that where an offence is committed within the dwelling of the victim that a court shall consider it having occurred in the victim's home to be an aggravating factor in the sentencing of any such offence.

Na Teachaí Charles Flanagan, Michael Ring, Meitheamh, 2009.