SENATE JUDICIARY
EXHIBIT NO. 21
DATE 3/17/09
BILL NO. HB228

Office of the Circuit Executive

Ninth Circuit Model Criminal Jury Instructions

6.7 SELF–DEFENSE

The defendant has offered evidence of having acted in self-defense. Use of force is justified when a person reasonably believes that it is necessary for the defense of oneself or another against the immediate use of unlawful force. However, a person must use no more force than appears reasonably necessary under the circumstances.

Force likely to cause death or great bodily harm is justified in self-defense only if a person reasonably believes that such force is necessary to prevent death or great bodily harm.

The government must prove beyond a reasonable dount that the defendant did not act in reasonable self-defense.

Comment

The first two paragraphs of this instruction are identical to the self-defense instructions contained in previous editions. *See, e.g.,* Manual of Model Criminal Jury Instructions for the Ninth Circuit, Instruction 6.5 (1997).The Ninth Circuit has found that the first two paragraphs of this instruction adequately inform the jury of defendant's defense where "[t]he court also instructed the jury that the prosecution bore the burden of proving beyond a reasonable doubt that the defendant had not acted in reasonable self-defense." *United States v. Keiser*, 57 F.3d 847, 850-52 (9th Cir. 1995), *cert. denied,* 516 U.S. 1029 (1995) (discussing Criminal Jury Instruction 6.05, 1992 edition).

Failure of the trial court to instruct the jury that the government has "to disprove beyond a reasonable doubt any claim of self-defense" is reversible error. *United States v. Sanchez-Lima*, 161 F.3d 545 (9th Cir. 1998).

A defendant is entitled to a self-defense instruction when "there is any foundation in the evidence, even though the evidence may be weak, insufficient, inconsistent or of doubtful credibility." *United States v. Sanchez-Lima,* 161 F.3d at 549.

See also Comment to Instruction 4.5 (Character of Victim) for a discussion of the admissibility of the victim's character where self-defense is claimed.

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