

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 249 CS Protection of Persons and Property
SPONSOR(S): Baxley and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 436

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary Committee	13 Y, 0 N, w/CS	Thomas	Hogge
2) Justice Appropriations Committee			
3) Justice Council	8 Y, 2 N, w/CS	Thomas	De La Paz
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill addresses provisions relating to the justifiable use of force.

The bill creates a presumption, with certain exceptions, that a person has a reasonable fear of imminent peril of death or great bodily harm to himself, herself, or to another person and may use deadly force in response if:

- the person against whom the force was used was in the process of unlawfully and forcibly entering a dwelling, residence, or occupied vehicle, and
- the person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or an unlawful and forcible act was occurring or had occurred.

The bill provides that a person (not engaged in an unlawful activity) who is attacked in a place "where the person has a right to be" other than a dwelling, residence, or occupied vehicle, does not have a duty to retreat and may meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself, herself, or to another or to prevent a forcible felony.

The bill creates a presumption that a person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is doing so with the intent to commit an unlawful act involving force or violence.

The bill provides immunity from criminal prosecution of, and civil action against, a person who has used justifiable force in the defense of himself, herself, or another person.

The bill takes effect October 1, 2005.

This bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility: the bill creates and amends liability and sanction provisions relating to unlawful and injurious behavior.

B. EFFECT OF PROPOSED CHANGES:

General Background

Castle Doctrine

Florida has long been under the “castle doctrine” which provides that a person attacked in his or her own home or premises may stand his or her ground and use such force as may appear reasonably necessary to save his or her life or the life of another, or to save himself or herself or another from great bodily harm and the person has no duty to retreat, but may not lie in wait for his attacker.¹ The “castle doctrine” has been defined as:

the proposition that a person’s dwelling house is a castle of defense for himself and his family, and an assault on it with intent to injure him or any lawful inmate of it may justify the use of force as protection, and even deadly force if there exist reasonable and factual grounds to believe that unless so used, a felony would be committed.²

The “castle doctrine” has been extended by Florida Courts to include employees in their places of employment while lawfully engaged in their occupations.³ The Courts have declined to extend the doctrine to the use of force by a temporary visitor or guest in a residence.⁴

Justifiable Use of Force

Chapter 776, Florida Statutes, and associated case law, govern the use of force in the state by a citizen against another. In general, the statutes provide that a person may justifiably use the same degree of force that is used against him or her by another person to such an extent that the first person reasonably believes such force is necessary to prevent harm to himself, another, or the interference with certain property.

Florida courts have defined “deadly force” as occurring when the natural, probable, and foreseeable consequences of the defendant’s acts are death.⁵ Discharge of a firearm has been held as a matter of law to constitute deadly force because a firearm is by definition a deadly weapon.⁶ “Deadly force” is statutorily defined as “force that is likely to cause death or great bodily harm,” including, but not limited to:

- Firing a firearm in the direction of the person, even though there is no intent to kill or inflict great bodily harm.
- Firing a firearm at a vehicle.⁷

¹ *Danford v. State*, 43 So. 593 (Fla. 1907).

² *Falco v. State*, 407 So.2d 203, 208 (Fla. 1981).

³ *Redondo v. State*, 380 So.2d 1107 (Fla. 3d DCA 1980); *State v. Smith*, 376 So.2d 261 (Fla. 3d DCA 1979).

⁴ *State v. James*, 867 So.2d 414 (Fla. 3d DCA 2004).

⁵ *Garramone v. State*, 636 So.2d 869 (Fla. 4th DCA 1994).

⁶ *Miller v. State*, 613 So.2d 530 (Fla. 3d DCA 1993).

⁷ Section 776.06(1), F.S.

Pursuant to s. 776.041, F.S., the statutory justifications for the use of force are not applicable to the initial aggressor if:

- The initial aggressor is committing, attempting to commit, or escaping after the commission of a forcible felony, or
- The initial aggressor initially provoked the use of force against him or herself.

Duty to Retreat

In Florida, a person acting in self-defense outside his or her home or workplace has a “duty to use every reasonable means to avoid the danger, including retreat, prior to using deadly force.”⁸ This common law duty created by the courts is also referred to as a duty to retreat “to the wall” and is not found in statute.⁹ The duty to retreat applies to mutual combatants and to an initial aggressor.¹⁰ The majority of jurisdictions outside of Florida “do not impose a duty to retreat before a [person] may resort to deadly force when threatened with death or great bodily harm.”¹¹

The Courts have found that a limited duty to retreat within the residence to the extent reasonably possible does exist when the attacker and the person using force were husband and wife living in the same home or when the attacker is an invitee.¹² A defender has no duty to retreat before using non-deadly force to protect himself or herself.¹³

Forcible Felony

A forcible felony is defined in s. 776.08, F.S. as:

- Treason
- Murder
- Manslaughter
- Sexual battery
- Carjacking
- Home-invasion robbery
- Robbery
- Burglary
- Arson
- Kidnapping
- Aggravated assault
- Aggravated battery
- Aggravated stalking
- Aircraft piracy
- Unlawful throwing, placing, or discharging of a destructive device or bomb
- Any other felony involving the use or threat of physical force or violence against any person.

⁸ *Weiland v. State*, 732 So.2d 1044 (Fla. 1999). *State v. James*, 867 So. 2d 414, 416 (Fla. 3d DCA 2003).

⁹ *Weiland*, at 1049.

¹⁰ *Pell v. State*, 122 So. 110, 116 (Fla. 1929) and s. 776.041, F.S.

¹¹ *Weiland*, note 4.

¹² *Weiland v. State*, 732 So.2d 1044 (Fla. 1999).

¹³ *Weiland*, note 4.

Section-by-Section Analysis

Whereas Clauses

The bill contains several whereas clauses to provide legislative findings regarding:

- the propriety of people to protect themselves, their families and others from intruders and attackers without fear of prosecution or civil action.
- the “castle doctrine” and its origins.
- the right of citizens to bear arms in defense of themselves.
- the right of citizens and visitors to expect to remain unmolested in their homes or vehicles.
- a person’s freedom from being required to surrender his or her personal safety or to needlessly retreat from intruders or attackers.

Section 1: Creates s. 776.013, F.S., relating to home protection; use of deadly force; presumption of fear of death or bodily injury

Present Situation

See discussion under General Background above.

Proposed Changes

Subsection (1) of this newly created section provides that a person is presumed, rather than having the burden to prove, to have a reasonable fear of imminent peril of death or great bodily harm to himself, herself, or to another person and may use deadly force in response if:

- the person against whom the force was used was in the process of unlawfully and forcibly entering a dwelling, residence, or occupied vehicle, and
- the person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or an unlawful and forcible act was occurring or had occurred.

Subsection (2) provides the following exceptions to the presumption created in subsection (1):

- if the person entering the dwelling, residence, or vehicle has a right to be in the dwelling, residence, or vehicle, such as an owner, titleholder, invitee, or lessee and there is not a protective injunction or other court order prohibiting that person from being there.
- if the person sought to be removed from the dwelling, residence, or vehicle is a child, grandchild, or is otherwise in the lawful custody or guardianship of the person whom the force is used against.
- if the person who used the force was engaged in unlawful activity or was using the dwelling or vehicle in furtherance of unlawful activity.
- if the person entering the dwelling, residence, or vehicle is a law enforcement officer in the performance of his or her official duties.

Subsection (3) provides that a person (not engaged in an unlawful activity) who is attacked in a place “where the person has a right to be” other than a dwelling, residence, or occupied vehicle, does not have a duty to retreat and may meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself, herself, or to another or to prevent a forcible felony. See General Background above for a list of forcible felonies.

Subsection (4) creates a presumption that a person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is doing so with the intent to commit an unlawful act involving force or violence.

Subsection (5) provides the following definitions:

- "Dwelling" – to mean a building or conveyance (car, trailer, boat, cart, etc.), including any attached porch, that has a roof, whether the dwelling or conveyance is temporary or permanent, mobile or immobile, and is designed to be occupied by people lodging therein at night.
- "Residence" – to mean a dwelling in which a person resides, either temporarily or permanently, or is visiting as an invited guest.
- "Vehicle" – to mean any conveyance (car, trailer, boat, cart, etc.), whether or not it is motorized, that is designed to transport people or property.

Section 2: Amending s. 776.012, F.S., relating to the use of force in defense of a person

Present Situation

Section 776.012, F.S., provides that a person is justified in using force that falls short of deadly force in defense of himself, herself, or another "when and to the extent" he or she reasonably believes such force is necessary to defend against another's imminent use of unlawful force. A person may use deadly force under this section if he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself, herself, or to another or to prevent the imminent commission of a forcible felony.

Proposed Changes

The bill amends s. 776.012, F.S., to provide that a person does not have a duty to retreat whenever possible prior to using force authorized under this section. The bill further amends this section to recognize the authorization for the use of deadly force provided by this bill in the newly created s. 776.013, F.S.

Section 3: Amending s. 776.031 F.S., relating to the use of force in defense of others

Present Situation

Section 776.031, F.S., provides that a person is justified in using non-deadly force against another when he or she reasonably believes it is necessary, under the following circumstances:

- To prevent or end another's trespass upon or interference with real property other than a dwelling.
- To prevent or end another's trespass upon or interference with personal property.
- So long as the property is in his or her lawful possession, or in the lawful possession of a member of his or her immediate family or household, or is in the lawful possession of a person whose property he or she has a legal duty to protect.

A person may use deadly force under the provisions of this section if he or she reasonably believes it is necessary to prevent the imminent commission of a forcible felony. See General Background above for a list of forcible felonies.

Proposed Changes

The bill amends s. 776.013, F.S., relating to the use of force in defense of another person to provide that a person does not have a duty to retreat if the person is in a place "where he or she has a right to be."

Section 4: Creating s. 776.032, F.S., relating to immunity from criminal prosecution and civil action for justifiable use of force

Present Situation

Section 776.085, F.S., provides a statutory defense to any civil action for damages when such action arose due to injuries suffered during the commission or attempted commission of a forcible felony. In such a civil action where the person who used justifiable force prevails based on the defense created by this section, the non-prevailing party, if convicted of and incarcerated for the crime, may lose certain privileges provided by the correctional facility. This section further directs the court to award attorney's fees.

Proposed Changes

Subsection (1) of this newly created section provides immunity from criminal prosecution and civil action to a person who has used justifiable force in the defense of himself, herself, or another person.

Subsection (2) provides that a law enforcement agency may use its standard procedures for investigating the use of force, but that it may not arrest a person for using force unless it determines that probable cause exists showing that the force used was unlawful.

Subsection (3) provides that a court must award attorney's fees, court costs, compensation for any loss of income, and compensation for all expenses incurred by a person in defense of any civil action for the use of force if the court finds that the person sued is immune from prosecution under this section.

Section 5: Effective Date

This section provides that the bill will take effect on October 1, 2005.

C. SECTION DIRECTORY:

Section 1: Creates section 776.013, Florida Statutes, relating to use of deadly force.

Section 2: Amends section 776.012, Florida Statutes, relating to use of force in defense of a person.

Section 3: Amends section 776.031, Florida Statutes, relating to use of force in defense of others.

Section 4: Creates section 776.032, Florida Statutes, relating to immunity from criminal prosecution and civil action for justifiable use of force.

Section 5: Amends section 776.041, Florida Statutes, relating to use of force by an aggressor.

Section 6: Provides an effective date of October 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There is no apparent economic impact on the private sector by this bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this joint resolution does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable under this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

This analysis is drawn to the Committee Substitute that was adopted at the March 23, 2005, meeting of the House Justice Council. The Committee Substitute as passed by the House Justice Council made only technical changes to the Committee Substitute as passed by the House Judiciary Committee. These technical differences are:

- Clarifies that the provisions of s. 776.013(3), F.S., do not apply if a person is engaged in an unlawful activity.
- Specifically cites subsection (14) within s. 943.10, F.S., when referencing the definition of a “law enforcement officer.”
- Clarifies that the immunity from criminal prosecution in s. 776.032, F.S., applies only to the use of force as “permitted” by ss. 776.012, 776.013, and 776.031, F.S.

The bill was also amended at the February 23, 2005, meeting of the House Judiciary Committee. The bill as passed by the House Judiciary Committee differed from the bill as filed in that it:

- Contains modified whereas clauses;
- Requires a vehicle to be occupied for the presumption to occur;
- Provides an exception to the presumption if the person entering the dwelling or vehicle has a right to be in the dwelling or vehicle, such as an owner, titleholder, invitee, or lessee and there is not a protective injunction or other court order prohibiting that person from being there;
- Provides an exception to the presumption if the person sought to be removed from the dwelling or vehicle is a child, grandchild, or is otherwise in the lawful custody or guardianship of the person whom the force is used against;
- Provides an exception to the presumption if the person who used the force was engaged in unlawful activity or was using the dwelling or vehicle in furtherance of unlawful activity;
- Provides an exception to the presumption for law enforcement in the performance of their official duties;
- Removes from the bill the provision that would have awarded attorney’s fees and costs from the state in wrongful criminal prosecutions for use of force;
- Changes the effective date from upon becoming a law to October 1, 2005.