

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: CS/SB 436

SPONSOR: Criminal Justice Committee and Senators Peaden, Argenziano, and others

SUBJECT: Justifiable Use of Force

DATE: February 10, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
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I. Summary:

Committee Substitute for Senate Bill 436 redefines justifiable use of force (self-defense) by:

- creating certain presumptions that remove questions of fact from a trial jury regarding reasonableness of fear as it relates to escalated use of force, and criminal intent;
- requiring a court to award costs, fees and financial damages payable by law enforcement, state attorneys or civil plaintiffs when the court finds the use of force by the defendant to be justifiable;
- eliminating the common law “duty to retreat” and extending the application of the “castle doctrine” under most conditions; and

This bill substantially amends sections 776.012 and 776.031, Florida Statutes, and creates sections 776.013 and 776.032, Florida Statutes.

II. Present Situation:

Chapter 776, F.S., governs the justifiable use of force - deadly force or force that falls short of deadly - against another. In general, the statutes provide for Person “A” justifiably meeting the degree of force which is used against him or her by Person “B,” to such an extent that Person “A” reasonably believes such conduct is necessary to prevent varying degrees of harm to himself, another, or the interference with certain real property.

Deadly Force Defined

Florida courts have defined deadly force as occurring when the natural, probable, and foreseeable consequences of the defendant's acts are death. *Garramone v. State*, 636 So.2d 869 (Fla. 4th DCA 1994). 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. *Miller v. State*, 613 So.2d 530 (Fla. 3d DCA 1993).

Deadly force is statutorily defined in ch. 776, F.S., 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 to be arrested (presumably Person "B"), even though there is no intent on the part of Person "A" to kill or inflict great bodily harm.
- Firing a firearm at a vehicle in which Person "B" – the person to be arrested – is riding.

s. 776.06(1), F.S.

Use of Deadly Force

In defense of persons – self or others – a person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself, herself, or another. There is a Florida common law duty, however, to use every reasonable means to avoid the danger, including retreat, prior to using deadly force.

A person is also justified in using deadly force, if he or she reasonably believes it is necessary to prevent the imminent commission of a forcible felony. s. 776.012, F.S.; s. 776.031, F.S.

"Castle Doctrine"

It should be noted that if Person "A" is attacked in his own home or on his premises, he has no duty to retreat. This is an exception to the common law duty to retreat. He can "stand his ground and meet force with force, even to the extent of using force likely to cause death or great bodily harm, if it was necessary to prevent death or great bodily harm to himself or another, or the commission of a forcible felony." *Florida Standard Jury Instructions*, 3.04(d).

This application of the "castle doctrine" recognizes that when a man has been attacked in his own home or immediately surrounding premises, he has "retreated to the wall," and that his own home is his sanctuary. The doctrine applies to all those who lawfully reside on the premises.

The "castle doctrine" has been extended by Florida courts to include employees in their places of employment while lawfully engaged in their occupations. *See Redondo v. State*, 380 So.2d 1107 (Fla. 3d DCA 1980); *State v. Smith*, 376 So.2d 261 (Fla. 3d DCA 1979).

The Courts have declined to extend the "castle doctrine" privilege to a temporary visitor or guest, weighing the extension against the underlying policy consideration of the "duty to retreat" rule. As stated in the dissent in *State v. Bobbitt*, "[h]uman life is precious, and deadly combat should be avoided if at all possible when imminent danger to oneself can be avoided." *Id.*, 415 So.2d 724, at 728 (Fla. 1982).

A “middle ground” has been found, however, in cases where one is attacked by a co-occupant of the home, or even a lawful visitor or guest, as is so often the case in domestic violence cases. “If [Person “A”] was attacked in his/her own home or on his/her own premises by [a co-occupant] [any person who was lawfully on the premises], [Person “A”] had a duty to retreat within the residence to the extent reasonably possible without increasing his/her own danger of death or great bodily harm. However, [Person “A”] is not required to flee his/her home and had the lawful right to stand his/her ground and meet force with force, even to the extent of using force likely to cause death or great bodily harm if it was necessary to prevent death or great bodily harm to himself/herself.” *Florida Standard Jury Instructions, 3.04(d)*.

Forcible Felony

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.

Use of Non-Deadly Force

In defense of self or another, a person is justified in using force that falls short of deadly force when and to the extent he or she reasonably believes it is necessary to defend against another’s imminent use of unlawful force. s. 776.012, F.S.

With regard to defense of property, a person is justified 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),
- or personal property,
- so long as the property is in his or her lawful possession, or the possession of his or her immediate family or one whose property he or she has a legal duty to protect.

Jury Questions

In situations where Person “A” is charged with a crime resulting from an encounter with Person “B,” and Person “A” raises the justifiable use of force as a defense, the jury must answer certain questions of fact. These include questions involving the following:

Reasonably Believed the Use of Force was Necessary

This particular instruction to the jury, applicable in use of deadly force cases, is modified and given in cases on use of non-deadly force as well.

“In deciding whether [Person “A”] was justified in the use of force likely to cause death or great bodily harm, you must judge him by the circumstances by which he was surrounded at the time the force was used. The danger facing [Person “A”] need not have been actual; however, to justify the use of force likely to cause death or great bodily harm, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, [Person “A”] must have actually believed that the danger was real.” *Florida Standard Jury Instructions, 3.04(d), (e)*.

Necessity to Avoid the Use of Deadly Force/Retreating

“[Person “A”] cannot justify the use of force likely to cause death or great bodily harm unless he used every reasonable means within his power and consistent with his own safety to avoid the danger before resorting to that force...The fact that [Person “A”] was wrongfully attacked cannot justify his use of force likely to cause death or great bodily harm if by retreating he could have avoided the need to use that force. However, if [Person “A”] was placed in imminent danger of death or great bodily harm and it would have increased his own danger to retreat, then his use of force likely to cause death or great bodily harm was justifiable.” *Standard Jury Instructions, 3.04(d)*.

Prior Threats

“If you find that [Person “A”] who because of threats or prior difficulties with [Person “B”] had reasonable grounds to believe that he was in danger of death or great bodily harm at the hands of [Person “B”], then [Person “A”] had the right to arm himself. However, [Person “A”] cannot justify the use of force likely to cause death or great bodily harm, if after arming himself he renewed his difficulty with [Person “B”] when he could have avoided the difficulty.” *Standard Jury Instructions, 3.04(d)*.

Reputation of [Person “B”]/ Physical Abilities

“If you find that [Person “B”] had a reputation of being a violent and dangerous person and that his reputation was known to [Person “A”], you may consider this fact in determining whether the actions of [Person “A”] were those of a reasonable person in dealing with an individual of that reputation. ...

In considering the issue of self-defense, you may take into account the relative physical abilities and capacities of [Person “A”] and [Person “B”].” *Florida Standard Jury Instructions, 3.04(d), (e)*.

These particular instructions are given in both deadly and non-deadly force cases.

Justification for Use of Force by Initial Aggressor

Generally, the justified use of force described herein is not applicable to the initial aggressor (Person “B” in the scenarios used above), if:

- “B” is committing, attempting to commit, or escaping after the commission of a forcible felony, or
- “B” initially provoked the use of force (by Person “A”) against him or herself

unless

- the force used by Person “A” against Person “B” is so great that “B” reasonably believes that he is in imminent danger of death or great bodily harm and
 - “B” has exhausted every reasonable means of escaping such danger, other than the use of force which is likely to cause death or great bodily harm to Person “A” or
 - “B” withdraws, in good faith, from physical contact with “A,” and “B” clearly indicates the desire to withdraw and end the use of force initiated by “B,” but “A” continues or resumes the use of force.

s. 776.041, F.S.

Use of Force by Law Enforcement or Correctional Officers – Limited Liability

There are certain parameters set forth in the statute under which a law enforcement or correctional officer may discharge his or her firearm, when such discharge does not rise to the level of “deadly force.” For example, an officer may use *any* force he reasonably believes is necessary to prevent escapes from custody. If an officer discharges his firearm and it contains “less-lethal munition” (i.e., rubber bullets), such discharge does not constitute deadly force. s. 776.06, F.S.; s. 776.07, F.S. Further, law enforcement officers, and those persons they summon to assist them in making an arrest, are justified in using force to make the arrest to any degree he reasonably believes is necessary to prevent harm to himself, to capture escaped felons, and to arrest fleeing felons. s. 776.05, F.S.

Liability is limited, or certain defenses are available to law enforcement or correctional officer uses of force. These include:

- If the injury or wrongful death occurred during the commission of a forcible felony.
- Where deadly force is necessary to prevent a felon from fleeing arrest, and, when feasible, some warning had been given, *and* the officer reasonably believes the fleeing felon poses a threat of death or serious physical harm, *and* the officer reasonably believes the fleeing felon has committed a crime involving serious physical harm, or the threat of it, to another.
- The officer discharges a firearm using less-lethal munition, in good faith and within the scope of his official duties.

s. 776.05(3), F.S.; s. 776.06(3), F.S.; s. 776.085, F.S.

III. Effect of Proposed Changes:

Amendments to Existing Law

Section 2 of the bill amends s. 776.012, F.S., which governs defense of persons. As amended by the bill, the statute would provide that Person “A” could be justified in using deadly force (or force intended to or likely to cause bodily injury) against Person “B” so long as Person “A” reasonably believes it is necessary to defend himself or another against Person “B’s” imminent use of unlawful force.

Section 2 also adds language to s. 776.012, F.S., providing that “a person does not have a duty to retreat under the circumstances set forth in (the newly-created) s. 776.013, F.S.,” fully explained below.

Section 3 of the bill amends s. 776.031, F.S., which governs defense of property. The bill adds the language: “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 5 provides that the bill shall take effect October 1, 2005.

Newly Created Law

Section 1 of the bill creates a presumption that a person is in reasonable fear of imminent peril of death or bodily injury when he or she is using “defensive force that is intended or likely to cause death or great bodily injury” under certain conditions. Those conditions are:

- Where the person against whom the force is used had unlawfully or forcibly entered, or attempted to enter a dwelling, residence, or vehicle or
- Had removed or attempted to remove another from the dwelling, residence, or vehicle, against that person’s will, and
 - The person using “defensive force” knew or had reason to believe that an unlawful or forcible entry or act had occurred.

This presumption does not apply under the following circumstances:

- When Person “B” (the one against whom Person “A” uses defensive force) is an owner, lessee, or titleholder of the dwelling, residence, or vehicle and there is not an injunction for protection from domestic violence against that person;
- When the person or person sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used;
- When Person “A” (the one using defensive force) was engaged in an unlawful activity or using the dwelling, residence, or occupied vehicle to further an unlawful activity; or
- When a law enforcement officer, having identified him or herself as such, enters or attempts to enter a dwelling, residence, or vehicle, or when the person using defensive force knew or reasonably should have known the person entering was a law enforcement officer.

This section of the bill also creates a presumption that a person who unlawfully enters or attempts to enter a dwelling, residence, or occupied vehicle is doing so with the intent to commit an unlawful act involving force or violence.

Dwelling is defined as a building or conveyance of any kind which has a roof over it, and is designed to be occupied by people lodging therein at night.

Residence is defined as a dwelling in which a person resides, temporarily or permanently, or is visiting as an invited guest.

Vehicle is defined as any kind of conveyance designed to transport people or property, motorized or not motorized.

This section also eliminates the duty to retreat by any person who has a right to be in any other place.

The practical effects of this section include:

- Eliminating the questions of fact regarding whether a person had a reasonable belief that the use of deadly force was necessary – the presumption requires that the jury find that when he or she uses deadly force he or she is necessarily in reasonable fear to that extent, under the conditions set forth above.
- The same is true of the presumption created with regard to the intent of the one entering or attempting to enter a dwelling, residence, or occupied vehicle. The intent to commit an unlawful act involving force or violence will be presumed to be true, not a question of fact.
- The elimination of the duty to retreat will arguably effectively extend the “castle doctrine” to anyone who is an invited guest (i.e., has the right to be at the location), and could create confusion with regard to whose right to be in a particular location is paramount for purposes of justifiable use of force.

It should be noted that the definitions of dwelling, residence, and vehicle differ somewhat from those used elsewhere in Florida Statutes. For instance, the term “residence” is not defined in the burglary statute at all – which is the statute under which many of the serious crimes involving unlawful entering would fall.

Section 4 of the bill provides immunity from criminal prosecution and civil action in cases where it is found by the court that the defendant’s actions constituted justifiable use of force. The bill requires a court to award attorney’s fees, costs, lost compensation and all expenses incurred by a person defending him or herself in a civil case, if the court finds the defendant immune from prosecution.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None noted.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

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