

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: Judiciary Committee

BILL: CS/CS/SB 436

SPONSOR: Judiciary Committee, Criminal Justice Committee, Senator Peaden and others

SUBJECT: Protection of Persons and Property

DATE: February 25, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Cibula</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute permits a person to use force, including deadly force, without fear of criminal prosecution or civil action for damages, against a person who unlawfully and forcibly enters the person's dwelling, residence, or occupied vehicle. Additionally, the committee substitute abrogates the common law duty to retreat when attacked before using force, including deadly force in self-defense or defense of others.

This bill substantially amends the following sections of the Florida Statutes: 776.012 and 776.031. This bill also creates the following sections of the Florida Statutes: 776.013 and 776.032.

II. Present Situation:

Both statutes and common law govern the circumstances under which a person may use force in self-defense or defense of others. Under the statutes, a person may use force, including deadly force, when necessary. Florida common law, with some exceptions, however, limits the use of deadly force to situations in which the defender has used all reasonable means to avoid the danger.

Florida Statutes

Section 776.012, F.S., describes the right to use force including deadly force in defense of oneself or others.

776.012 Use of force in defense of person.—A person is justified in the use of force, except deadly force, against another when and to the extent that the person

reasonably believes that such conduct is necessary to defend himself or herself or another against such other's imminent use of unlawful force. However, the 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 or herself or another or to prevent the imminent commission of a forcible felony.

Although the catch line to s. 776.031, F.S., is "Use of force in defense of others," that section primarily pertains to the use of force to protect property.

776.031 Use of force in defense of others.—A person is justified in the use of force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate such other's trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect. However, the person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent the imminent commission of a forcible felony.

Common Law Duty to Retreat

Under Florida common law, 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."^{1,2} This duty is also referred to as a duty to retreat "to the wall."³ The duty to retreat also applies to both parties in mutual combat and to an initial aggressor.⁴ A defender has no duty to retreat before using non-deadly force.⁵

The duty to retreat has not always been a part of the common law. Centuries ago, "any man who was feloniously attacked without provocation could stand his ground *anywhere*, not retreat, and use deadly force if necessary to repel the attacker."⁶ Today, the common law places a "greater emphasis on the sanctity of life as opposed to chivalry."⁷ Similarly, the duty to retreat appears to stem from the policy that "[h]uman life is precious, and deadly combat should be avoided if at all possible when imminent danger to oneself can be avoided."⁸

¹ *State v. James*, 867 So. 2d 414, 416 (Fla. 3d DCA 2003).

² According to *Weiland v. State*, 732 So. 2d 1044, note 4 (Fla. 1999), "a majority of jurisdictions do not impose a duty to retreat before a defendant may resort to deadly force when threatened with death or great bodily harm."

³ *Weiland v. State*, 732 So. 2d 1044, 1049 (Fla. 1999).

⁴ *Pell v. State*, 122 So. 110, 116 (Fla. 1929) and s. 776.041, F.S.

⁵ *Weiland*, 732 So. 2d, note 4.

⁶ *Cannon v. State*, 464 So. 2d 149, 150 (Fla. 5th DCA 1985) (emphasis original).

⁷ *Id.*

⁸ *State v. James*, 867 So. 2d 414, 417 (Fla. 3d DCA 2003) (quoting *State v. Bobbitt*, 415 So. 2d 724, 728 (Fla. 1982)).

Castle Doctrine Exception

The castle doctrine is an exception to the duty to retreat before using deadly force reasonably believed necessary to prevent imminent death or great bodily harm. When a person is in his or her “castle,” the person has no duty to retreat before using deadly force against an intruder. A person’s castle is limited to his or her home and workplace.⁹ The castle doctrine is 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.¹⁰

Additionally, instruction 3.6(f), Florida Standard Jury Instructions in Criminal Cases, which is designed to be read to juries in home-defense cases, states:

If the defendant was attacked in [his] [her] own home or on [his] [her] own premises, [he] [she] had no duty to retreat 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] [another].]

[the commission of a forcible felony.]

This instruction suggests that a person must first be attacked in the home by an intruder before resorting to force. As such, the jury instruction appears to be in conflict with s. 776.012, F.S., which allows the use of force to “defend” against or “prevent” unlawful force. At least one case, however, suggests that fear of great bodily harm, as opposed to actual attack, is sufficient grounds to exercise self-defense.¹¹

The castle-doctrine exception to the duty to retreat only applies to those “lawfully residing in the premises.”¹² Visitors or invitees of a resident must attempt to retreat before using deadly force against an intruder.¹³

The essential policy behind the castle doctrine is that a person in his or her home or “castle” has satisfied his or her duty to retreat “to the wall.”¹⁴ In *Weiland v. State*, the policy for the doctrine was explained as follows:

⁹ *State v. James*, 867 So. 2d 416-417.

¹⁰ *Weiland v. State*, 732 So. 2d note 5 (citing *Falco v. State*, 407 So. 2d 203, 208 (Fla. 1981)).

¹¹ *Quaggin v. State*, 752 So. 2d 19, 23 (Fla. 5th DCA 2000).

¹² *James*, 867 So. 2d 417.

¹³ *Id.* (holding that the castle doctrine did not apply to the resident’s new boyfriend in a shooting of the resident’s violent ex-boyfriend).

¹⁴ *James*, 867 So. 2d 416.

It is not now and never has been the law that a man assailed in his own dwelling is bound to retreat. If assailed there, he may stand his ground and resist the attack. He is under no duty to take to the fields and the highways, a fugitive from his own home. More than 200 years ago it was said by Lord Chief Justice Hale: In case a man “is assailed in his own house, he need not flee as far as he can, as in other cases of *se defendendo* [self-defense], for he hath the protection of his house to excuse him from flying, as that would be to give up the protection of his house to his adversary by flight.” *Flight is for sanctuary and shelter, and shelter, if not sanctuary, is in the home The rule is the same whether the attack proceeds from some other occupant or from an intruder.*¹⁵

Exception to Castle Doctrine Exception

An exception, to the castle-doctrine exception to the common law duty to retreat, is applicable when a resident uses deadly force in his or her home in self-defense against a co-occupant or invitee. This exception to the exception provides that a person must retreat within the residence to the extent reasonably possible, but not from the residence, before resorting to deadly force against a co-occupant or invitee necessary to prevent death or great bodily harm.¹⁶ Additionally, before resorting to any force, the defender must first be attacked by a co-occupant or invitee.¹⁷

Defense to Civil Action

Under s. 776.085, F.S., a person acting in self-defense is not liable for damages for personal injury or death of a person who attempted or who was attempting to engage in a forcible felony at the time the injuries were sustained. The term “forcible felony” means:

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; and any other felony which involves the use or threat of physical force or violence against any individual.¹⁸

The prevailing party is entitled to attorney’s fees from the losing party and the losing party’s attorney, unless the attorney acted in good faith.¹⁹

¹⁵ *Weiland* 732 So. 2d 1049-1050 (emphasis original).

¹⁶ *Id.* The facts in *Weiland* involved a situation in which a wife who was a victim of domestic violence alleged self-defense and battered spouse syndrome as a defense to a first-degree murder charge for the shooting death of her husband.

¹⁷ See *Barkley v. State*, 750 So. 2d 755, 756 (Fla. 2nd DCA 2000) (stating that “someone, while in his or her home when attacked by an invitee) and *Standard Jury Instructions – Criminal Cases (Castle Doctrine)*, 789 So. 2d 954, APPENDIX (Fla. 2000) (promulgating a Standard Jury Instruction regarding a defendant who is attacked in his or her own home who meets force with force).

¹⁸ Section 776.08, F.S.

¹⁹ Section 776.085(4)(b), F.S.

Legal Standard for Arrest

A law enforcement officer must have probable cause to believe that a crime has been committed before making an arrest.²⁰ “Facts constituting probable cause need not meet the standard of conclusiveness and probability required to support a conviction.”²¹

III. Effect of Proposed Changes:

This committee substitute permits a person to use force, including deadly force, without fear of criminal prosecution or civil action for damages, against a person who unlawfully and forcibly enters the person’s dwelling, residence, or occupied vehicle. Additionally, the committee substitute abrogates the common law duty to retreat when attacked before using deadly force that is reasonably necessary to prevent imminent death or great bodily harm.

Presumed Fear of Death or Great Bodily Harm

The committee substitute creates a presumption that a defender in his or her home, in a place of temporary lodging, as a guest in the home or temporary lodging of another, or in a vehicle has a reasonable fear of imminent death or great bodily harm when an intruder is in the process of unlawfully and forcibly entering or enters. The committee substitute also presumes that the intruder intends to commit an unlawful act involving force or violence. These presumptions protect the defender from civil and criminal prosecution for unlawful use of force or deadly force in self-defense.

These presumptions about the intent of the intruder, however, do not apply when the intruder:

- has a right to be in the home, place of temporary lodging, or vehicle, unless there is a domestic violence injunction or written pretrial supervision order of no contact against that person;
- is seeking to remove a person lawfully under his or her care from a home, place of temporary lodging, or vehicle; or
- is a law enforcement officer, acting lawfully, and the defender knew or had reason to know that the intruder was a law enforcement officer.

Additionally, a defender is not entitled to the benefit of the presumptions created by the committee substitute if the defender was engaged in unlawful activity at the time of the unlawful and forcible entry or if the defender was using his or her home, place of temporary lodging, place of temporary lodging of another, or vehicle to further unlawful activity. The committee substitute does not require any connection between the unlawful activity and the unlawful and forcible entry.

²⁰ *Stone v. State*, 856 So. 2d. 1109, 1111 (Fla. 4th DCA 2003) and *Swartz v. State*, 857 So. 2d 950, 951-952 (Fla. 4th DCA 2003).

²¹ *Swartz*, 857 So. 2d 952 (quoting *Seago v. State*, 768 So.2d 498, 500 (Fla. 2d DCA 2000)).

Conclusiveness of Presumption

Legal presumptions are typically rebuttable. The presumptions created by the committee substitute, however, appear to be conclusive.

Jury Questions

Under current law, a jury can determine whether a defender in a home-invasion case who used deadly force against an intruder had a *reasonable fear* of imminent death or great bodily injury. The conclusive presumptions in the committee substitute appear to prevent a jury from determining whether a person had a reasonable fear. Under the committee substitute, juries may likely decide whether an entry was unlawful and forcible, and whether the defender knew or had reason to know that the entry was unlawful and forcible.

Expansion of Castle-Doctrine Concept

This committee substitute expands the castle doctrine by expanding the concept of what is a “castle” and by expanding the group of persons entitled to the castle’s protection.

Under the castle doctrine, a person has no duty to retreat from his or her “castle,” a person’s home or workplace, before resorting to deadly force necessary for self-defense. This committee substitute will expand the concept of the castle to include attached porches, any type of vehicle, and place of temporary lodging, including tents.

Under the castle doctrine, only persons lawfully residing in a dwelling have no duty to retreat before resorting to deadly force necessary for self-defense. Under the committee substitute, invited guests in another person’s “castle” will have the same rights to self-defense as a resident of the expanded castle.

Abrogation of Florida Common Law Duty to Retreat

Under Florida common law, a person has a duty to retreat, if outside his or her home or place of business, before resorting to deadly force reasonably believed necessary to prevent imminent death or great bodily harm. A person attacked within his or her home by a co-occupant or invitee must also retreat, if possible, within the home, but not from the home, before resorting to deadly force. Under the committee substitute, a person will no longer have any duty to retreat, unless the person is not in a place where he or she is lawfully entitled to be.

Immunity

Under a new statutory section of law, the committee substitute provides that a person who acts in self-defense in accordance with the provisions of the committee substitute is immune from criminal prosecution and civil actions. This provision is slightly different than the defense to civil actions under s. 776.085, F.S., in that the committee substitute does not require proof that the intruder was attempting to engage in a forcible felony. Under the committee substitute, the intruder’s actual intent is irrelevant. The committee substitute, in effect, appears to create a conclusive presumption of the intruder’s malicious intent. Additionally, existing law provides for

an award of attorney's fees to the prevailing party. The committee substitute provides for an award of attorney's fees and costs.

The bill takes effect October 1, 2005.

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.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The catch line for s. 776.013, F.S., created by the committee substitute is: "Home protection; use of deadly force; presumption of fear of death or great bodily harm." That section, however, pertains to self-defense in places of temporary lodging, homes, and vehicles. The Legislature may wish to amend the catch line to state: "Self-defense and defense of others in dwellings, temporary lodging, and vehicles; fear of death or great bodily harm presumed" to more completely reflect the contents of the section.

The drafting of the committee substitute is somewhat confusing in the way that the Florida common law duty to retreat is completely abrogated. Existing s. 776.012, F.S., authorizes the use of force, including deadly force, in self-defense and defense of others. To this section, the

committee substitute adds the sentence: “[A person] does not have a duty to retreat . . . under the circumstances permitted pursuant to s. 776.013,” which is a new section created by the committee substitute. For the most part, s. 776.013, F.S., speaks to self-defense in a dwelling, place of temporary lodging, or a vehicle. Further, that section does not address the existence or non-existence of a duty to retreat in a dwelling, place of temporary lodging, or vehicle. Section 776.013(3), F.S., however, states that a person has no duty to retreat if attacked in “any other place.” The Legislature may wish to amend the committee substitute to eliminate the confusion.

The committee substitute incorporates s. 776.031, F.S., which contains an incorrect catch line in existing law. That catch line states “776.031 Use of force in defense of others.” Section 776.031, however, principally pertains to defense of property. The Legislature may wish to amend the catch line to state: “776.031 Defense of property; prevention of forcible felony.”

Existing s. 776.085, F.S., already provides a defense to certain civil actions as the result of force. Creating a separate section of statute for the immunity provisions in this committee substitute may create confusion over which provision is applicable in a particular case.

Lastly, page 5, line 17, uses the word “prosecution” in the context of immunity from civil action. The word “prosecution” is more often associated with criminal proceedings. As such, the Legislature may wish to replace the word “prosecution” with “civil action.”

VIII. Summary of Amendments:

None.

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