

By Senator Altman

16-00223-14

2014438\_\_

1                   A bill to be entitled  
2       An act relating to defense of life, home, or property;  
3       creating s. 776.001, F.S.; providing legislative  
4       findings and intent; defining terms; providing that  
5       the defensive display of a weapon or firearm,  
6       including the discharge of a firearm as a warning  
7       shot, does not constitute the use of deadly force;  
8       providing that a person is immune from prosecution if  
9       he or she acts in defense of life, home, or property  
10      from an unlawful activity or the threat of an unlawful  
11      activity under certain circumstances; providing for  
12      the justifiable defensive display of a weapon or  
13      firearm in certain circumstances; providing  
14      exceptions; providing that a person is not required to  
15      defensively display a weapon or firearm or issue a  
16      defensive warning before using force or deadly force  
17      if the person is otherwise justified in using or  
18      threatening to use force; amending s. 776.06, F.S.;  
19      revising the definition of the term "deadly force" to  
20      apply to a law enforcement officer or correctional  
21      officer; creating s. 775.0878, F.S.; providing  
22      legislative findings; requiring the sentencing court  
23      to impose a downward departure from minimum sentence  
24      requirements related to the possession or use of a  
25      weapon or firearm by a person convicted of certain  
26      offenses under specified circumstances; providing an  
27      effective date.

28  
29       WHEREAS, the intent of mandatory minimum sentencing laws is

16-00223-14

2014438\_\_

30 to deter crime without discouraging the lawful defense of life,  
31 home, or property, and

32 WHEREAS, the defensive display of a weapon or firearm in  
33 self-defense does not constitute the use of deadly force and is  
34 justified in defense of life, home, or property, and

35 WHEREAS, a person who acts to lawfully defend himself or  
36 herself is, at that point, already a crime victim, NOW,  
37 THEREFORE,

38

39 Be It Enacted by the Legislature of the State of Florida:

40

41 Section 1. Section 776.001, Florida Statutes, is created to  
42 read:

43 776.001 Defense of life, home, or property.-

44 (1) The Legislature finds that it is unreasonable to  
45 prosecute a person for acting in a lawfully defensive manner.  
46 The Legislature further finds that the defensive display of a  
47 weapon or firearm, including the discharge of a firearm as a  
48 warning shot, is a lawfully valid method to prevent or to  
49 terminate an unlawful activity. Therefore, it is the intent of  
50 the Legislature that a person be immunized from prosecution if  
51 he or she acts in such a manner as to protect life, home, or  
52 property from an imminent or actual unlawful activity.

53 (2) As used in this section, the term:

54 (a) "Deadly force" has the same meaning as in s. 776.06.

55 (b) "Defensively displays a weapon or firearm" means to  
56 overtly show or present a weapon or firearm in order to cause an  
57 aggressor to believe that the person who overtly shows or  
58 presents a weapon or firearm will, if necessary:

16-00223-14

2014438\_\_

59       1. Use force or deadly force to lawfully defend from the  
60 aggressor's imminent or actual unlawful activity against the  
61 life, home, or property of the person; or

62       2. Use force sufficient to effect a lawful arrest.

63  
64 The term does not include the mere carrying of a weapon or  
65 firearm in a manner that is not prohibited by law.

66       (c) "Defensive warning" or "defensively warned" means:

67       1. A verbal warning to place an aggressor on notice that  
68 the person attacked actually possesses or has available access  
69 to a weapon or firearm; or

70       2. Placement of the person's hand on a weapon or firearm  
71 while the weapon or firearm is contained in a pocket, purse,  
72 holster, or other means of containment or transport.

73       (d) "Force" means:

74       1. Words or actions that reasonably convey the threat of  
75 force, including, but not limited to, direct threats to cause  
76 death or great bodily harm to another person; or

77       2. The application of physical force, including the use of  
78 a weapon or firearm.

79       (e) "Unlawful activity" means:

80       1. Commission of a crime involving the use or threat of  
81 violence;

82       2. Illegal distribution of a controlled substance; or

83       3. Use of a residence, commercial structure, or occupied  
84 vehicle to commit a crime involving the use or threat of  
85 violence or the illegal distribution of a controlled substance.

86       (3) A person acting in defense of life, home, or property  
87 from an unlawful activity or the threat of an unlawful activity

16-00223-14

2014438\_\_

88 is immune from prosecution if he or she:

89 (a) Defensively displayed a weapon or firearm if the person  
90 reasonably believed that displaying the weapon or firearm was  
91 necessary to prevent an unlawful activity or to terminate an  
92 actual unlawful activity;

93 (b) Defensively warned the aggressor that he or she was  
94 prepared to use force or, if necessary, deadly force by having  
95 possession of or access to a weapon or firearm;

96 (c) Fired a warning shot if the person firing the shot  
97 believed that discharging the weapon or firearm would prevent an  
98 unlawful activity or terminate an actual unlawful activity;

99 (d) Used force in defense of life, home, or property if the  
100 person reasonably believed that using force was necessary to  
101 prevent an aggressor from committing an unlawful activity or to  
102 terminate an ongoing unlawful activity; or

103 (e) Used deadly force if the person reasonably believed  
104 that using deadly force was necessary to prevent death or great  
105 bodily harm to himself or herself or to prevent an aggressor  
106 from continuing an ongoing unlawful activity.

107 (4) This section does not require a person to defensively  
108 display a weapon or firearm or to issue a defensive warning  
109 before using force or deadly force if the person is otherwise  
110 justified in using or threatening to use force.

111 (5) This section does not immunize a person from  
112 prosecution if the person:

113 (a) Intentionally provoked another person into using or  
114 attempting to use force or deadly force without cause; or

115 (b) Attempted to commit, committed, or escaped immediately  
116 after the commission of, an unlawful activity.

16-00223-14

2014438\_\_

117 Section 2. Section 776.06, Florida Statutes, is amended to  
118 read:

119 776.06 Deadly force by law enforcement or correctional  
120 officers.—

121 (1) As used in this section and as applied to a law  
122 enforcement officer or correctional officer who acts during and  
123 within the scope of his or her official duties, the term "deadly  
124 force" means force that is likely to cause death or great bodily  
125 harm and includes, but is not limited to:

126 (a) The firing of a firearm in the direction of the person  
127 to be arrested, even though no intent exists to kill or inflict  
128 great bodily harm; and

129 (b) The firing of a firearm at a vehicle in which the  
130 person to be arrested is riding.

131 (2) (a) The term "deadly force" does not include the  
132 discharge of a firearm by a law enforcement officer or  
133 correctional officer during and within the scope of his or her  
134 official duties which is loaded with a less-lethal munition. As  
135 used in this subsection, the term "less-lethal munition" means a  
136 projectile that is designed to stun, temporarily incapacitate,  
137 or cause temporary discomfort to a person without penetrating  
138 the person's body.

139 (b) A law enforcement officer or a correctional officer is  
140 not liable in any civil or criminal action arising out of the  
141 use of any less-lethal munition in good faith during and within  
142 the scope of his or her official duties.

143 Section 3. Section 775.0878, Florida Statutes, is created  
144 to read:

145 775.0878 Exemption from minimum sentence requirement.—

16-00223-14

2014438\_\_

146       (1) The Legislature finds that s. 775.087 does not apply to  
147 a person who acts in self-defense or in defense of others and  
148 that such person is not subject to sentencing under s. 775.087.

149       (2) Notwithstanding any other law, when sentencing a  
150 defendant convicted of aggravated assault or aggravated battery,  
151 the sentencing court shall impose a downward departure from the  
152 mandatory minimum sentence prescribed in s. 775.087(2) if the  
153 sentencing court finds the following by a preponderance of the  
154 evidence:

155       (a) The defendant did not act in the furtherance of another  
156 criminal act;

157       (b) The defendant established a prima facie case at trial,  
158 during any proceeding, by stipulation, or at any stage of the  
159 investigation that the act alleged was committed with defensive  
160 intent; and

161       (c) The mandatory minimum sentence is not compelled for the  
162 protection of the public.

163       (3) The state may appeal a downward departure from a  
164 mandatory minimum sentence under this section.

165       Section 4. This act shall take effect upon becoming a law.