



480342

LEGISLATIVE ACTION

Senate

.

House

.

.

Floor: 1/AD/2R

.

03/20/2014 02:59 PM

.

.

Senator Evers moved the following:

Senate Amendment (with title amendment)

Delete lines 74 - 355

and insert:

Section 2. Subsection (6) is added to section 775.087,
Florida Statutes, to read:

775.087 Possession or use of weapon; aggravated battery;
felony reclassification; minimum sentence.-

(6) Notwithstanding s. 27.366, the sentencing court shall
not impose the mandatory minimum sentence required by
subsections (2) or (3) for a conviction for aggravated assault



480342

12 if the court makes written findings that:

13 (a) The defendant had a good faith belief that the
14 aggravated assault was justifiable pursuant to ch. 776;

15 (b) The aggravated assault was not committed in the course
16 of committing another criminal offense;

17 (c) The defendant does not pose a threat to public safety;
18 and

19 (d) The totality of the circumstances involved in the
20 offense do not justify the imposition of such sentence.

21 Section 3. Section 776.012, Florida Statutes, is amended to
22 read:

23 776.012 Use or threatened use of force in defense of
24 person.-

25 (1) A person is justified in using or threatening to use
26 force, except deadly force, against another when and to the
27 extent that the person reasonably believes that such conduct is
28 necessary to defend himself or herself or another against the
29 other's imminent use of unlawful force. A person who uses or
30 threatens to use force in accordance with this subsection does
31 not have a duty to retreat before using or threatening to use
32 such force. However,

33 (2) A person is justified in using or threatening to use
34 ~~the use of deadly force and does not have a duty to retreat if:~~

35 ~~(1)~~ he or she reasonably believes that using or threatening
36 to use such force is necessary to prevent imminent death or
37 great bodily harm to himself or herself or another or to prevent
38 the imminent commission of a forcible felony; ~~or~~

39 ~~(2) Under those circumstances permitted pursuant to s.~~
40 776.013. A person who uses or threatens to use deadly force in



480342

41 accordance with this subsection does not have a duty to retreat
42 and has the right to stand his or her ground if the person using
43 or threatening to use the deadly force is not engaged in a
44 criminal activity and is in a place where he or she has a right
45 to be.

46 Section 4. Subsections (1), (2), and (3) of section
47 776.013, Florida Statutes, are amended to read:

48 776.013 Home protection; use or threatened use of deadly
49 force; presumption of fear of death or great bodily harm.—

50 (1) A person is presumed to have held a reasonable fear of
51 imminent peril of death or great bodily harm to himself or
52 herself or another when using or threatening to use defensive
53 force that is intended or likely to cause death or great bodily
54 harm to another if:

55 (a) The person against whom the defensive force was used or
56 threatened was in the process of unlawfully and forcefully
57 entering, or had unlawfully and forcibly entered, a dwelling,
58 residence, or occupied vehicle, or if that person had removed or
59 was attempting to remove another against that person's will from
60 the dwelling, residence, or occupied vehicle; and

61 (b) The person who uses or threatens to use defensive force
62 knew or had reason to believe that an unlawful and forcible
63 entry or unlawful and forcible act was occurring or had
64 occurred.

65 (2) The presumption set forth in subsection (1) does not
66 apply if:

67 (a) The person against whom the defensive force is used or
68 threatened has the right to be in or is a lawful resident of the
69 dwelling, residence, or vehicle, such as an owner, lessee, or



480342

70 titleholder, and there is not an injunction for protection from
71 domestic violence or a written pretrial supervision order of no
72 contact against that person; or

73 (b) The person or persons sought to be removed is a child
74 or grandchild, or is otherwise in the lawful custody or under
75 the lawful guardianship of, the person against whom the
76 defensive force is used or threatened; or

77 (c) The person who uses or threatens to use defensive force
78 is engaged in a criminal ~~an unlawful~~ activity or is using the
79 dwelling, residence, or occupied vehicle to further a criminal
80 ~~an unlawful~~ activity; or

81 (d) The person against whom the defensive force is used or
82 threatened is a law enforcement officer, as defined in s.
83 943.10(14), who enters or attempts to enter a dwelling,
84 residence, or vehicle in the performance of his or her official
85 duties and the officer identified himself or herself in
86 accordance with any applicable law or the person using or
87 threatening to use force knew or reasonably should have known
88 that the person entering or attempting to enter was a law
89 enforcement officer.

90 (3) A person ~~who is not engaged in an unlawful activity and~~
91 ~~who is attacked~~ in his or her dwelling, residence, or vehicle ~~in~~
92 ~~any other place where he or she has a right to be~~ has no duty to
93 retreat and has the right to stand his or her ground and use or
94 threaten to use force ~~meet force with force~~, including deadly
95 force, if he or she uses or threatens to use force in accordance
96 with s. 776.012(1) or (2) or s. 776.031(1) or (2) ~~reasonably~~
97 ~~believes it is necessary to do so to prevent death or great~~
98 ~~bodily harm to himself or herself or another or to prevent the~~



480342

99 ~~commission of a forcible felony.~~

100 Section 5. Section 776.031, Florida Statutes, is amended to
101 read:

102 776.031 Use or threatened use of force in defense of
103 property ~~others.~~—

104 (1) A person is justified in using or threatening to use
105 ~~the use of force~~, except deadly force, against another when and
106 to the extent that the person reasonably believes that such
107 conduct is necessary to prevent or terminate the other's
108 trespass on, or other tortious or criminal interference with,
109 either real property other than a dwelling or personal property,
110 lawfully in his or her possession or in the possession of
111 another who is a member of his or her immediate family or
112 household or of a person whose property he or she has a legal
113 duty to protect. A person who uses or threatens to use force in
114 accordance with this subsection does not have a duty to retreat
115 before using or threatening to use such force. ~~However, the~~

116 (2) A person is justified in using or threatening to use
117 ~~the use of~~ deadly force only if he or she reasonably believes
118 that such conduct ~~force~~ is necessary to prevent the imminent
119 commission of a forcible felony. ~~A person does not have a duty~~
120 ~~to retreat if the person is in a place where he or she has a~~
121 ~~right to be.~~ A person who uses or threatens to use deadly force
122 in accordance with this subsection does not have a duty to
123 retreat and has the right to stand his or her ground if the
124 person using or threatening to use the deadly force is not
125 engaged in a criminal activity and is in a place where he or she
126 has a right to be.

127 Section 6. Subsections (1) and (2) of section 776.032,



480342

128 Florida Statutes, are amended to read:

129 776.032 Immunity from criminal prosecution and civil action
130 for justifiable use or threatened use of force.—

131 (1) A person who uses or threatens to use force as
132 permitted in s. 776.012, s. 776.013, or s. 776.031 is justified
133 in ~~using~~ such conduct ~~force~~ and is immune from criminal
134 prosecution and civil action for the use or threatened use of
135 such force by the person, personal representative, or heirs of
136 the person against whom the force was used or threatened, unless
137 the person against whom force was used or threatened is a law
138 enforcement officer, as defined in s. 943.10(14), who was acting
139 in the performance of his or her official duties and the officer
140 identified himself or herself in accordance with any applicable
141 law or the person using or threatening to use force knew or
142 reasonably should have known that the person was a law
143 enforcement officer. As used in this subsection, the term
144 “criminal prosecution” includes arresting, detaining in custody,
145 and charging or prosecuting the defendant.

146 (2) A law enforcement agency may use standard procedures
147 for investigating the use or threatened use of force as
148 described in subsection (1), but the agency may not arrest the
149 person for using or threatening to use force unless it
150 determines that there is probable cause that the force that was
151 used or threatened was unlawful.

152 Section 7. Subsection (2) of section 776.041, Florida
153 Statutes, is amended to read:

154 776.041 Use or threatened use of force by aggressor.—The
155 justification described in the preceding sections of this
156 chapter is not available to a person who:



480342

157 (2) Initially provokes the use or threatened use of force
158 against himself or herself, unless:

159 (a) Such force or threat of force is so great that the
160 person reasonably believes that he or she is in imminent danger
161 of death or great bodily harm and that he or she has exhausted
162 every reasonable means to escape such danger other than the use
163 or threatened use of force which is likely to cause death or
164 great bodily harm to the assailant; or

165 (b) In good faith, the person withdraws from physical
166 contact with the assailant and indicates clearly to the
167 assailant that he or she desires to withdraw and terminate the
168 use or threatened use of force, but the assailant continues or
169 resumes the use or threatened use of force.

170 Section 8. Subsection (1) of section 776.051, Florida
171 Statutes, is amended to read:

172 776.051 Use or threatened use of force in resisting arrest
173 or making an arrest or in the execution of a legal duty;
174 prohibition.-

175 (1) A person is not justified in the use or threatened use
176 of force to resist an arrest by a law enforcement officer, or to
177 resist a law enforcement officer who is engaged in the execution
178 of a legal duty, if the law enforcement officer was acting in
179 good faith and he or she is known, or reasonably appears, to be
180 a law enforcement officer.

181 Section 9. Subsection (1) of section 776.06, Florida
182 Statutes, is amended to read:

183 776.06 Deadly force by a law enforcement or correctional
184 officer.-

185 (1) As applied to a law enforcement officer or correctional



480342

186 officer acting in the performance of his or her official duties,

187 the term "deadly force" means force that is likely to cause

188 death or great bodily harm and includes, but is not limited to:

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

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

194

195

196 ===== T I T L E A M E N D M E N T =====

197 And the title is amended as follows:

198 Delete lines 4 - 24

199 and insert:

200 775.087, F.S.; prohibiting the court from imposing
201 certain mandatory minimum sentences if the court makes
202 specified written findings; amending s. 776.012, F.S.;
203 applying provisions relating to the use of force in
204 defense of persons to the threatened use of force;
205 providing that a person who lawfully uses or threatens
206 to use nondeadly force does not have a duty to
207 retreat; providing that a person who lawfully uses or
208 threatens to use deadly force does not have a duty to
209 retreat if the person using or threatening the deadly
210 force is not engaged in a criminal activity and is in
211 a place where he or she has a right to be; amending s.
212 776.013, F.S.; applying presumption relating to the
213 use of deadly force to the threatened use of deadly
214 force in the defense of a residence and similar



480342

215 circumstances; applying provisions relating to such
216 use of force to the threatened use of force; removing
217 provisions relating to one's duty to retreat prior to
218 using force; amending s. 776.031, F.S.; applying
219 provisions relating to the use of force in defense of
220 property to the threatened use of force; providing
221 that a person who lawfully uses or threatens to use
222 nondeadly force does not have a duty to retreat;
223 providing that a person who lawfully uses or threatens
224 to use deadly force does not have a duty to retreat if
225 the person using or threatening the deadly force is
226 not engaged in a criminal activity and is in a place
227 where he or she has a right to be; amending s.
228 776.032, F.S.; applying immunity provisions that
229 relate to the use of force to the threatened use of
230 force; limiting immunity provisions to civil actions
231 by the person, personal representative, or heirs of
232 the person against whom force was used; amending s.
233 776.041, F.S.; applying provisions relating to the use
234 of force by an aggressor to the threatened use of
235 force; providing exceptions; amending s. 776.051,
236 F.S.; providing that a person is not justified in the
237 threatened use of force to resist an arrest by a law
238 enforcement officer; amending s. 776.06, F.S.,
239 clarifying that the statute relates to use of force by
240 a law enforcement or correctional officer; creating s.
241 776.09, F.S.;