

1 A bill to be entitled

2 An act relating to the threatened use of force;
3 providing legislative findings and intent; amending s.
4 776.012, F.S.; applying provisions relating to the use
5 of force in defense of persons to the threatened use
6 of force; amending s. 776.013, F.S.; applying
7 presumption relating to the use of deadly force to the
8 threatened use of deadly force in the defense of a
9 residence and similar circumstances; applying
10 provisions relating to such use of force to the
11 threatened use of force; amending s. 776.031, F.S.;
12 applying provisions relating to the use of force in
13 defense of property to the threatened use of force;
14 amending s. 776.032, F.S.; applying immunity
15 provisions that relate to the use of force to the
16 threatened use of force; amending s. 776.041, F.S.;
17 applying provisions relating to the use of force by an
18 aggressor to the threatened use of force; providing
19 exceptions; amending s. 776.051, F.S.; providing that
20 a person is not justified in the threatened use of
21 force to resist an arrest by a law enforcement
22 officer; providing an effective date.

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

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26 Section 1. (1) The Legislature finds that persons have

27 been criminally prosecuted and have been sentenced to mandatory
 28 minimum terms of imprisonment pursuant to s. 775.087, Florida
 29 Statutes, for threatening to use force in a manner and under
 30 circumstances that would have been justifiable under chapter
 31 776, Florida Statutes, had force actually been used.

32 (2) The Legislature intends to:

33 (a) Provide criminal and civil immunity to those who
 34 threaten to use force if the threat was made in a manner and
 35 under circumstances that would have been immune under chapter
 36 776, Florida Statutes, had force actually been used.

37 (b) Clarify that those who threaten to use force may claim
 38 self-defense if the threat was made in a manner and under
 39 circumstances that would have been justifiable under chapter
 40 776, Florida Statutes, had force actually been used.

41 (c) Ensure that those who threaten to use force in a
 42 manner and under circumstances that are justifiable under
 43 chapter 776, Florida Statutes, are not sentenced to a mandatory
 44 minimum term of imprisonment pursuant to s. 775.087, Florida
 45 Statutes.

46 (d) Encourage those who have been sentenced to a mandatory
 47 minimum term of imprisonment pursuant to s. 775.087, Florida
 48 Statutes, for threatening to use force in a manner and under
 49 circumstances that are justifiable under chapter 776, Florida
 50 Statutes, to apply for executive clemency.

51 Section 2. Section 776.012, Florida Statutes, is amended
 52 to read:

53 776.012 Use or threatened use of force in defense of
 54 person.—A person is justified in using or threatening to use
 55 force, except deadly force, against another when and to the
 56 extent that the person reasonably believes that such conduct is
 57 necessary to defend himself or herself or another against the
 58 other's imminent use of unlawful force. However, a person is
 59 justified in using or threatening to use ~~the use of~~ deadly force
 60 and does not have a duty to retreat if:

61 (1) He or she reasonably believes that using or
 62 threatening to use such force is necessary to prevent imminent
 63 death or great bodily harm to himself or herself or another or
 64 to prevent the imminent commission of a forcible felony; or

65 (2) Under those circumstances permitted pursuant to s.
 66 776.013.

67 Section 3. Subsections (1), (2), and (3) of section
 68 776.013, Florida Statutes, are amended to read:

69 776.013 Home protection; use or threatened use of deadly
 70 force; presumption of fear of death or great bodily harm.—

71 (1) A person is presumed to have held a reasonable fear of
 72 imminent peril of death or great bodily harm to himself or
 73 herself or another when using or threatening to use defensive
 74 force that is intended or likely to cause death or great bodily
 75 harm to another if:

76 (a) The person against whom the defensive force was used
 77 or threatened was in the process of unlawfully and forcefully
 78 entering, or had unlawfully and forcibly entered, a dwelling,

79 residence, or occupied vehicle, or if that person had removed or
80 was attempting to remove another against that person's will from
81 the dwelling, residence, or occupied vehicle; and

82 (b) The person who uses or threatens to use defensive
83 force knew or had reason to believe that an unlawful and
84 forcible entry or unlawful and forcible act was occurring or had
85 occurred.

86 (2) The presumption set forth in subsection (1) does not
87 apply if:

88 (a) The person against whom the defensive force is used or
89 threatened has the right to be in or is a lawful resident of the
90 dwelling, residence, or vehicle, such as an owner, lessee, or
91 titleholder, and there is not an injunction for protection from
92 domestic violence or a written pretrial supervision order of no
93 contact against that person; or

94 (b) The person or persons sought to be removed is a child
95 or grandchild, or is otherwise in the lawful custody or under
96 the lawful guardianship of, the person against whom the
97 defensive force is used or threatened; or

98 (c) The person who uses or threatens to use defensive
99 force is engaged in an unlawful activity or is using the
100 dwelling, residence, or occupied vehicle to further an unlawful
101 activity; or

102 (d) The person against whom the defensive force is used or
103 threatened is a law enforcement officer, as defined in s.
104 943.10(14), who enters or attempts to enter a dwelling,

105 residence, or vehicle in the performance of his or her official
106 duties and the officer identified himself or herself in
107 accordance with any applicable law or the person using or
108 threatening to use force knew or reasonably should have known
109 that the person entering or attempting to enter was a law
110 enforcement officer.

111 (3) A person who is not engaged in an unlawful activity
112 and who is attacked in any other place where he or she has a
113 right to be has no duty to retreat and has the right to stand
114 his or her ground and use or threaten to use ~~meet force with~~
115 force, including deadly force if he or she reasonably believes
116 it is necessary to do so to prevent death or great bodily harm
117 to himself or herself or another or to prevent the commission of
118 a forcible felony.

119 Section 4. Section 776.031, Florida Statutes, is amended
120 to read:

121 776.031 Use or threatened use of force in defense of
122 property ~~others~~.—A person is justified in using or threatening
123 to use ~~the use of~~ force, except deadly force, against another
124 when and to the extent that the person reasonably believes that
125 such conduct is necessary to prevent or terminate the other's
126 trespass on, or other tortious or criminal interference with,
127 either real property other than a dwelling or personal property,
128 lawfully in his or her possession or in the possession of
129 another who is a member of his or her immediate family or
130 household or of a person whose property he or she has a legal

131 duty to protect. However, a ~~the~~ person is justified in using or
132 threatening to use ~~the use of~~ deadly force only if he or she
133 reasonably believes that such conduct ~~force~~ is necessary to
134 prevent the imminent commission of a forcible felony. A person
135 does not have a duty to retreat if the person is in a place
136 where he or she has a right to be.

137 Section 5. Subsections (1) and (2) of section 776.032,
138 Florida Statutes, are amended to read:

139 776.032 Immunity from criminal prosecution and civil
140 action for justifiable use or threatened use of force.—

141 (1) A person who uses or threatens to use force as
142 permitted in s. 776.012, s. 776.013, or s. 776.031 is justified
143 in ~~using~~ such conduct ~~force~~ and is immune from criminal
144 prosecution and civil action for the use or threatened use of
145 such force, unless the person against whom force was used or
146 threatened is a law enforcement officer, as defined in s.
147 943.10(14), who was acting in the performance of his or her
148 official duties and the officer identified himself or herself in
149 accordance with any applicable law or the person using or
150 threatening to use force knew or reasonably should have known
151 that the person was a law enforcement officer. As used in this
152 subsection, the term "criminal prosecution" includes arresting,
153 detaining in custody, and charging or prosecuting the defendant.

154 (2) A law enforcement agency may use standard procedures
155 for investigating the use or threatened use of force as
156 described in subsection (1), but the agency may not arrest the

157 person for using or threatening to use force unless it
158 determines that there is probable cause that the force that was
159 used or threatened was unlawful.

160 Section 6. Subsection (2) of section 776.041, Florida
161 Statutes, is amended to read:

162 776.041 Use or threatened use of force by aggressor.—The
163 justification described in the preceding sections of this
164 chapter is not available to a person who:

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

167 (a) Such force or threat of force is so great that the
168 person reasonably believes that he or she is in imminent danger
169 of death or great bodily harm and that he or she has exhausted
170 every reasonable means to escape such danger other than the use
171 or threatened use of force which is likely to cause death or
172 great bodily harm to the assailant; or

173 (b) In good faith, the person withdraws from physical
174 contact with the assailant and indicates clearly to the
175 assailant that he or she desires to withdraw and terminate the
176 use or threatened use of force, but the assailant continues or
177 resumes the use or threatened use of force.

178 Section 7. Subsection (1) of section 776.051, Florida
179 Statutes, is amended to read:

180 776.051 Use or threatened use of force in resisting arrest
181 or making an arrest or in the execution of a legal duty;
182 prohibition.—

183 (1) A person is not justified in the use or threatened use
184 of force to resist an arrest by a law enforcement officer, or to
185 resist a law enforcement officer who is engaged in the execution
186 of a legal duty, if the law enforcement officer was acting in
187 good faith and he or she is known, or reasonably appears, to be
188 a law enforcement officer.

189 Section 8. This act shall take effect upon becoming a law.