

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 228

INTRODUCER: Senator Bean

SUBJECT: Self-Defense Protection Act

DATE: October 2, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Pre-meeting
2.			ACJ	
3.			FP	

I. Summary:

SB 228 allows a defendant facing the 10-20-Life (“Use a Gun and You’re Done”) law the opportunity to avoid the minimum mandatory sentence associated with his or her offense by presenting mitigating evidence prior to sentencing.

The bill prohibits the court from imposing the minimum mandatory sentence if the court makes written findings that:

- The defendant had a good faith belief that his or her use or threatened use of force during the commission of the 10-20-Life offense was justifiable under chapter 776 of the Florida Statutes (Justifiable Use of Force).
- The defendant does not pose a threat to public safety.
- The totality of the circumstances involved in the offense does not justify the imposition of the minimum mandatory sentence.

The effect of the bill will be to create a potential reduction in the use of minimum mandatory sentences currently required by the 10-20-Life law.

The bill, which is to be cited as the “Self-Defense Protection Act,” becomes effective July 1, 2016.

II. Present Situation:

The 10-20-Life Law

The 10-20-Life law, s. 775.087, F.S., is among ten sentencing laws enacted by the 1999 Legislature after Governor Jeb Bush was elected in 1998 on a platform that included making

Florida's streets safer in response to Florida's rising violent crime rate in the 1990's.¹ The new laws took sentencing discretion away from judges and, at the same time, discouraged elected state attorneys from plea-bargaining these cases to lesser sentences.²

10-20-Life requires a judge to sentence a person convicted of specified offenses to a minimum term of imprisonment if, while committing the offense, the person possesses or discharges a firearm or destructive device, or if the discharge of the firearm results in death or great bodily harm.³

Mandatory Minimum Sentencing Under 10-20-Life

Under the 10-20-Life law, a person convicted of one of the specified crimes or the attempt to commit the crime must be sentenced to the following mandatory prison penalties:

- Possession of a firearm – 10 years
- Possession of a semi-automatic/machine gun – 15 years
- Discharge of a firearm (any type) – 20 years
- Discharge with great bodily injury or death – 25 years to life

The crimes specified in s. 775.087(2)(a)1., F.S. are:

- a. Murder;
- b. Sexual battery;
- c. Robbery;
- d. Burglary;
- e. Arson;
- f. Aggravated assault;
- g. Aggravated battery;
- h. Kidnapping;
- i. Escape;
- j. Aircraft piracy;
- k. Aggravated child abuse;
- l. Aggravated abuse of an elderly person or disabled adult;
- m. Unlawful throwing, placing, or discharging of a destructive device or bomb;
- n. Carjacking;
- o. Home-invasion robbery;
- p. Aggravated stalking;
- q. Trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid

¹ Chapter 99-12, L.O.F., "Whereas" clauses.

² *Tough Times in the Sunshine State*, Fingerhut, Scola; The Florida Bar Journal, November, 1999 Volume LXXIII, No. 10. Until 2011, when s. 27.366, F.S., was amended, 10-20-Life required state attorneys to report every potential 10-20-Life defendant whose case was not charged as a 10-20-Life case or who was not sentenced according to the minimum mandatories, to the presiding officers of the Legislature and the Governor. Current law only requires that the deviation memo be retained in the case file.

³ The terms "firearm" and "destructive device" are defined in accordance with s. 790.001, F.S.

- (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1); or
- r. Possession of a firearm by a felon.

The offense of possession of a firearm by a convicted felon does not appear in the crimes specified in s. 775.087(3)(a)1., F.S., however sale, manufacture, delivery, or intent to sell, manufacture, or deliver any controlled substance is specified therein.⁴

Since the creation of the 10-20-Life mandatory minimum sentencing law, over 14,000 inmates have been admitted to prison for offenses under this law. On June 30, 2014, there were approximately 9,500 inmates in the prison population who were sentenced under the 10-20-Life law.

Amendment to 10-20-Life Law

Section 775.087, F.S., was amended in 2014 to create an exception for sentencing in aggravated assault cases outside the 10-20-Life minimum mandatory terms of imprisonment.

The exception provides that the court shall not impose the minimum mandatory sentence if the court makes written findings that:

- (a) The defendant had a good faith belief that the aggravated assault was justifiable pursuant to chapter 776.
- (b) The aggravated assault was not committed in the course of committing another criminal offense.
- (c) The defendant does not pose a threat to public safety.
- (d) The totality of the circumstances involved in the offense do not justify the imposition of such sentence.⁵

Justifiable Use of Force in Florida

Chapter 776 of the Florida Statutes contains Florida's self-defense and property-defense laws. The statutes set forth the circumstances under which a person may justifiably use defensive force, both non-deadly and deadly, against another.⁶

⁴ Section 775.087(3)(a)1.j., F.S.

⁵ Chapter 2014-195, L.O.F.; s. 775.087(6), F.S. Arguably it was the Marissa Alexander and Ronald Thompson 10-20-Life cases in Florida's Fourth Judicial Circuit and the George Zimmerman "Stand Your Ground"/justifiable use of force case in Sanford that began to highlight for the public the apparent incongruence in the very existence of, or perhaps the disparate application of, these two legal concepts. See "Use a Gun and You're Done: How 10-20-Life and 'Stand Your Ground' Together Have a Disparate Impact on Florida Citizens," Heller, Vol. 43, 2014, Southwestern L.R. See also Menzel, 'Worst...case...ever' draws 20-year sentence, outrage, The St. Augustine Record, June 23, 2012; and <http://famm.org/ronald-thompson/>.

⁶ Section 776.012, F.S., provides that a person is justified in using or threatening to use non-deadly or deadly force to defend him or herself or another. Section 776.031, F.S., provides that a person may use or threaten to use non-deadly force in the protection of lawfully possessed personal property or real property that is not a dwelling. A person is justified in using or threatening to use deadly force in defense of property only if he or she reasonably believes such conduct is necessary to prevent the imminent commission of a forcible felony. Section 776.013, F.S., the Home Protection section of the self-defense law extends beyond one's actual residence to include somewhat less conventional dwellings and vehicles. A person who is attacked in his or her dwelling, residence, or vehicle has no duty to retreat. He or she has the right to use or threaten to use

Under Florida law a person who is charged with a criminal offense may seek dismissal of the case because he or she lawfully acted defensively and he or she is therefore immune from prosecution.⁷ He or she may also raise a justifiable use of or threatened use of force defense at trial.⁸

The Use of the 10-20-Life Law in Cases Involving Self-Defense

In recent years some high-profile cases and controversy has emerged concerning the use of the 10-20-Life law when a defendant either displays or fires a gun in self-defense. Defendants who believe they acted in self-defense often times agree to a plea deal, admitting to crimes they do not feel they committed, in order to avoid the risk of a trial and a possible mandatory minimum 10 or 20-year prison sentence.

III. Effect of Proposed Changes:

The bill expands upon the exception for aggravated assaults enacted in 2014 to defendants who have been convicted of *any* of the 10-20-Life offenses.

The bill prohibits the court from imposing the 10-20-Life minimum mandatory sentence if the court makes written findings that:

- a) The defendant had a good faith belief that his or her use or threatened use of force was justifiable under chapter 776.
- b) The defendant does not pose a threat to public safety.
- c) The totality of the circumstances involved in the offense does not justify the imposition of the minimum mandatory sentence.

Current law includes the finding: “The aggravated assault was not committed in the course of committing another criminal offense.” This judicial finding is deleted by the bill as it is unnecessary to retain that particular finding given that aggravated assault appears in the list of all 10-20-Life offenses addressed in the bill.

In essence the bill allows a 10-20-Life defendant the opportunity to avoid the minimum mandatory sentence associated with his or her offense by presenting mitigating evidence prior to sentencing.

The bill’s effective date is July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

deadly or non-deadly force in accordance with s. 776.012, F.S. – Defense of Self or Others – or s. 776.031, F.S. – Defense of Property.

⁷ Section 776.032, F.S., applies in both the criminal and civil context.

⁸ FL ST CR JURY INST 3.6(f)

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

It is likely that the Department of Corrections will experience a positive fiscal impact from the bill due to fewer defendants receiving 10-20-Life sentences. The future number of defendants whose 10-20-Life sentences may be mitigated as a result of the bill is unpredictable; therefore, the fiscal impact cannot be determined with any certainty at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 775.087 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.