

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 677 Justifiable Use of Force
SPONSOR(S): Judiciary Committee, Criminal Justice Subcommittee, Byrd
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	6 Y, 3 N, As CS	Hall	White
2) Judiciary Committee	11 Y, 6 N, As CS	Hall	Camechis

SUMMARY ANALYSIS

Chapter 776, F.S., authorizes a person to justifiably use or threaten to use force in order to defend himself, herself, another, or property. Generally, in Florida, this right extends to a person, without requiring a duty to retreat, so long as the person is in a place where he or she has a right to be and is not engaged in criminal activity.

Chapter 776, F.S., codifies the right to justifiable use of force, non-deadly and deadly, as follows:

- Section 776.012, F.S., relating to the defense of person;
- Section 776.013, F.S., relating to home protection; and
- Section 776.031, F.S., relating to the defense of property.

Section 776.13(3), F.S., currently states, "A person who is attacked in his or her dwelling, residence, or vehicle has no duty to retreat and has the right to stand his or her ground and use or threaten to use force, including deadly force ..." as follows with respect to the use of force in defense of person:

- Non-deadly force may be used or threatened to be used 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 the other's imminent use of unlawful force.
- Deadly force may be used or threatened to be used against another if the person reasonably believes 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 if the person is not engaged in criminal activity and is in a place where he or she has a right to be.

The bill amends the above-described provisions to:

- Remove the term "attacked" to avoid any implication that an actual physical assault is required before the justifiable use of force is authorized. Such interpretation is inconsistent with the rest of the chapter, which allows a person to use defensive force as soon as the person reasonably believes such force is necessary to *prevent* or terminate another person's use of unlawful force.
- Remove the term "vehicle" so that the statute only applies to dwellings and residences.
- Broaden its application to any dwelling or residence in which a person has the right to be.
- Authorize a person to use deadly force without a duty to retreat when in a dwelling or residence where the person has a right to be notwithstanding engagement in criminal activity when necessary to prevent imminent death, great bodily harm, or a forcible felony.

The bill also reorders the provisions of s. 776.013, F.S., so they are more logically organized.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Justifiable Use of Force

Chapter 776, F.S., authorizes a person to use or threaten to use force in order to defend himself, herself, another, or property. In 2005, the Legislature enacted into law what is commonly referred to as the “Stand Your Ground” (SYG) law.¹ This law codified the common law’s “Castle Doctrine” which provides that a person, who is threatened with an intruder in his or her own home, has no duty to retreat and may defend himself or herself and his or her castle.² The castle doctrine has been explained by the courts as:

[T]he 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.³

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.”⁴ In *Weiland v. State*, the policy for the doctrine was explained as follows:

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.*⁵

The 2005 SYG law also generally eliminated the duty to retreat before justifiably using force in any place a person has a right to be. Most recently in 2014, the Legislature amended ch. 776, F.S., to also entitle a person to “threaten to use” force in the same manner in which he or she is justified in actually using force.⁶

Home Protection

Currently, s. 776.013(3), F.S., authorizes a person who is attacked⁷ in his or her dwelling, residence, or vehicle to stand his or her ground and use or threaten to use force, including deadly force, if he or she uses or threatens to use force either in accordance with:

- Sections 776.012(1) or (2), F.S. (defense of person); or
- Sections 776.031(1) or (2), F.S. (defense of property).

Both ss. 776.012(2) and 776.031(2), F.S., relating to the use of deadly force, do not afford the right to use deadly force without a duty to retreat, if the person using or threatening to use force is engaged in criminal activity. Currently, a person engaged in criminal activity in a dwelling, residence, or vehicle,

¹ ch. 2005-27, L.O.F.

² Steven Jansen & M. Elaine Nugent-Borakove, *Expansions to the Castle Doctrine, Implications for Policy and Practice*, NATIONAL DISTRICT ATTORNEYS ASSOCIATION, at 3, available at <http://www.ndaa.org/pdf/Castle%20Doctrine.pdf>.

³ *Weiland v. State*, 732 So. 2d 1044 at note 5 (citing *Falco v. State*, 407 So. 2d 203, 208 (Fla. 1981)).

⁴ *State v. James*, 867 So. 2d 414, 416 (Fla. 3d DCA 2003).

⁵ *Weiland*, 732 So. 2d at 1049-50 (emphasis original).

⁶ ch. 2014-195, L.O.F.

⁷ *Emphasis added*. This change resulted from the amendments to s. 776.013(3) made in 2014. ch. 2014-195, L.O.F.

who seeks to assert self-defense is required to attempt to retreat before using or threatening to use such force and is not entitled to the benefit of the presumption of fear generally afforded to those located in a such a place after an unlawful or forced entry by another. The current requirement does not comport with the Castle Doctrine which authorized a person threatened in his or her own home to defend themselves with no duty to retreat.

Additionally, as s. 776.013(3), F.S., is currently drafted, it may be interpreted to require a person to first be attacked in his or her dwelling, residence, or vehicle before being entitled to lawfully use defensive force. Such a result is inconsistent with the remainder of ch. 776, F.S., which entitles a person to use defensive force if he or she reasonably believes such force is necessary to *prevent* or terminate another's use of unlawful force.

Section 776.013(1), F.S., provides special privileges related to the justifiable use or threat of use of force for a person in a dwelling, residence, or occupied vehicle. The law creates a presumption of reasonable fear or imminent peril of death or great bodily harm on behalf of the person using or threatening to use defensive deadly force if:

- The person against whom the defensive force was used or threatened was in the process of unlawfully and forcefully entering, or had entered, a dwelling,⁸ residence,⁹ or occupied vehicle,¹⁰ or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and
- The person who uses or threatens to use defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

However, the presumption is limited from applying in certain circumstances including when the person against whom the force is used or threatened to be used:

- Has a right to be in or is a lawful owner of the dwelling, residence, or occupied vehicle;¹¹
- Is in lawful custody of a child or grandchild and sought to remove the child or grandchild from the dwelling, residence, or occupied vehicle;¹² or
- Is a law enforcement officer who enters the dwelling, residence, or occupied vehicle in the performance of his or her duties.¹³

Additionally, the presumption does not apply when the person who uses or threatens to use force is engaged in criminal activity or is using the dwelling, residence, or occupied vehicle to further a criminal activity.

Section 776.013(4), F.S., provides that a person who unlawfully and by force enters or attempts to enter a person's dwelling residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

The circumstances under which a person in his or her dwelling, residence, or vehicle is entitled to a presumption of reasonable fear appear in the law before the section codifying the right to use or threaten to use justifiable force. Therefore, the organization of s. 776.013, F.S., may be somewhat confusing.

⁸ "Dwelling" is defined to mean "a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night." s. 776.013(5)(a), F.S.

⁹ "Residence" is defined to mean "a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest." s. 776.013(5)(b), F.S.

¹⁰ "Vehicle" is defined to mean "a conveyance of any kind, whether or not motorized, which is designed to transport people or property." s. 776.013(5)(c), F.S.

¹¹ As long as the person does not have an injunction for protection from domestic violence or a no-contact order against him or her. s. 776.013(2)(a), F.S.

¹² s. 776.013(2)(b), F.S.

¹³ s. 776.013(2)(c), F.S.

Defense of Property

Section 776.031, F.S., authorizes the justifiable use of force in defense of property. A person is justified in using or threatening to use non-deadly force against another person, and has no duty to retreat, when the person reasonably believes that such conduct is necessary to prevent or terminate the other's trespass on, or other tortious interference with, property that is either:

- Real property (other than a dwelling) or personal property; and
- Lawfully in his or her possession or the possession of another who is a member or his or her immediate family or household or of a person whose property he or she has a legal duty to protect.

Furthermore, a person is justified in using or threatening to use deadly force only if he or she reasonably believes such conduct is necessary to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in this manner does not have a duty to retreat and has a right to stand his or her ground if the person:

- Is not engaged in criminal activity; and
- Is in a place where he or she has a right to be.

Defense of Person

Section 776.012, F.S., authorizes the justifiable use of force in defense of person. The law authorizes a person to use or threaten to use non-deadly force against another when that person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. A person who uses or threatens to use force in this manner does not have a duty to retreat before using or threatening to use such force.

Additionally, a person is justified in using or threatening to use deadly force if he or she reasonably believes such force is necessary to prevent:

- Imminent death or great bodily harm to himself, herself, or another; or
- The imminent commission of a forcible felony.¹⁴

A person using or threatening to use deadly force in this manner does not have a duty to retreat and has a right to stand his or her ground if the person:

- Is not engaged in criminal activity; and
- Is in a place where he or she has a right to be.

Limitations of the Justifiable Use of Force

Florida law prohibits or limits a person from asserting the defense of justifiable use of force in specified cases when a person uses or threatens to use force:

- To resist an arrest by a law enforcement officer, or to resist a law enforcement officer, acting in good faith, who is engaged in the execution of a legal duty;¹⁵
- In attempting to commit, committing, or escaping after the commission of a forcible felony;¹⁶
- If the person was the initial aggressor, unless:
 - He or she has exhausted every reasonable means to escape the danger other than the use of force and the person reasonably believes that he or she is in imminent death or great bodily harm; or
 - In good faith, the person withdraws from physical contact and indicates clearly to the assailant that he or she desires to terminate the use or threatened use of force, but the assailant continues or resumes the use or threatened use of force.¹⁷

¹⁴ Crimes which are classified as a "forcible felony" include: 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." s. 776.08, F.S.

¹⁵ s. 776.051, F.S.

¹⁶ s. 776.041(1), F.S.

¹⁷ s. 776.041(2), F.S.

These limitations apply regardless of where the use or threatened use of force occurs.

Effect of Bill

As discussed above, s. 776.13(3), F.S., currently states, “A person who is attacked in his or her dwelling, residence, or vehicle has no duty to retreat and has the right to stand his or her ground and use or threaten to use force, including deadly force ...” as follows with respect to use of force in defense of person:

- Non-deadly force may be used or threatened to be used 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 the other's imminent use of unlawful force.
- Deadly force may be used or threatened to be used against another if the person reasonably believes 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 if the person is not engaged in criminal activity and is in a place where he or she has a right to be.

The bill amends the above-described provisions to:

- Remove the term “attacked” to avoid any implication that an actual physical assault is required before the justifiable use of force is authorized. Such interpretation is inconsistent with the rest of the chapter, which allows a person to use defensive force as soon as the person reasonably believes such force is necessary to *prevent* or terminate another person’s use of unlawful force.
- Remove the term “vehicle” so that the statute only applies to dwellings and residences.¹⁸
- Broaden its application to any dwelling or residence in which a person has the right to be.
- Authorize a person to use deadly force without a duty to retreat when in a dwelling or residence where the person has a right to be notwithstanding engagement in criminal activity when necessary to prevent imminent death, great bodily harm, or a forcible felony.

Additionally, the bill reorganizes the current subsections within s. 776.013, F.S., to move the subsection authorizing a person’s right to stand his or her ground, without a duty to retreat, to appear before the subsections relating to the presumption of fear set forth in the statute. This reorganization makes no substantive change to the law; instead, it more logically organizes the section.

B. SECTION DIRECTORY:

Section 1: Amending s. 776.013, F.S., relating to home protection; use or threatened use of deadly force; presumption of fear of death or great bodily harm.

Section 2: Providing an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill does not appear to have any impact on state revenues.
2. Expenditures: The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to have any impact on local government revenues.

¹⁸ The right to use defensive force in a vehicle will be controlled by ss. 776.012 and 776.031, F.S. However, the presumption of fear of death or great bodily harm set forth in s. 776.013, F.S. will still apply to occupied vehicles.

2. Expenditures: The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the CS:

- Removes the term “attacked” from s. 776.013(1), F.S., relating to home protection, to conform the section with the other self-defense provisions of ch. 776; and
- Revises s. 776.013(1), F.S., to include statutory cross references which authorize the manner in which defensive force may be legally used in a dwelling, residence, or vehicle.

On April 24, 2017, the Judiciary Committee adopted a proposed committee substitute and reported the bill favorably as a CS. The CS differs from the bill in that the CS:

- Removes the term “vehicle” from s. 766.013(1), F.S., so that the statute only applies to dwellings and residences;
- Broadens its application to any dwelling or residence in which a person has the right to be; and
- Authorizes a person to use deadly force without a duty to retreat when in a dwelling or residence where the person has a right to be notwithstanding engagement in criminal activity when necessary to prevent imminent death, great bodily harm, or a forcible felony.

This analysis is drafted to the CS as passed by the Judiciary Committee.