

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4003 Use of Deadly Force in Defense of a Person

SPONSOR(S): Williams; Stafford and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 116

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cunningham	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Generally speaking, a person is justified in using force, other than deadly force, where the person reasonably believes such force is necessary to:

- Defend himself, herself, or another against another person's imminent use of unlawful force; or
- Prevent or terminate another person's trespass on, or other tortuous or criminal interference with certain property.

Deadly force is justified when the person reasonably believes such force is necessary to prevent imminent death or great bodily harm to himself, herself, or another or to prevent the imminent commission of a forcible felony.

Prior to 2005, Florida's statutes were silent regarding a duty to retreat before using force. However, Florida common law recognized such a duty and required one to "retreat to the wall" when attacked in a place outside one's home. There is no duty to retreat before using force when in one's home (a principle often referred to as the "Castle Doctrine").

In 2005, legislation often referred to as Florida's "Stand Your Ground" law passed, which, in part, amended ch. 776, F.S., to create presumptions relating to the Castle Doctrine and to remove one's duty to retreat before using force in certain instances outside of one's home.

The bill repeals s. 776.013, F.S., in its entirety, which abolishes all of the presumptions relating to the Castle Doctrine. Repealing s. 776.013, F.S., also abolishes a provision which removes one's duty to retreat prior to using force outside of one's home so long as the person is not engaged in an unlawful activity and is in a place he or she has a right to be. However, the bill does not remove the "duty to retreat" provisions in ss. 776.012 and 776.031, F.S., that were added in 2005. As such, a person does not have a duty to retreat outside of his or her home:

- Prior to using non-deadly force if the person is in a place where he or she has a right to be and reasonably believes that such conduct is necessary to prevent or terminate another person's trespass on, or other tortuous or criminal interference with certain property.
- Prior to using deadly force if the person reasonably believes that 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.

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

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Justifiable Use of Force - Background

Prior to 2005, s. 776.012, F.S., specified that a person was justified in using force, other than deadly force, where the person reasonably believed such force was necessary to defend himself, herself, or another against another person's imminent use of unlawful force. Deadly force was justified when the person reasonably believed such force was necessary to prevent imminent death or great bodily harm to himself, herself, or another or to prevent the imminent commission of a forcible felony^{1,2}.

Section 776.031, F.S. (2004), governed the instances in which a person was justified in using force to protect property. This statute authorized a person to use force, other than deadly force, where the person reasonably believed such force was necessary to prevent or terminate another person's trespass on, or other tortuous or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect.³ Deadly force to protect property was justifiable only if used to prevent a forcible felony.⁴

The justifications described in ss. 776.012 and 776.031, F.S. (2004), were not available to a person who:

- Was attempting to commit, committing, or escaping after the commission of, a forcible felony; or
- Initially provoked the use of force against himself or herself, unless:
 - Such force was so great that the person reasonably believed that he or she was in imminent danger of death or great bodily harm and that he or she had exhausted every reasonable means to escape such danger other than the use of force which was likely to cause death or great bodily harm to the assailant; or
 - In good faith, the person withdrew from physical contact with the assailant and indicated clearly to the assailant that he or she desired to withdraw and terminate the use of force, but the assailant continued or resumed the use of force.⁵

Prior to 2005, Florida's statutes were silent regarding a duty to retreat before using force. However, Florida common law recognized such a duty and required one to "retreat to the wall" when attacked in a place *outside one's home*.⁶ This principle was recognized by the Florida Supreme Court, which held that a person could not justifiably resort to using force *outside of his or her residence* without first using every reasonable means within his or her power to avoid the danger, including retreat.⁷ Florida has long recognized that there is no duty to retreat before using force when *in one's home* (a principle often referred to as the "Castle Doctrine").⁸

The "Stand Your Ground" Law

During the 2005 Legislative Session, Senate Bill 436 was filed. The bill, often referred to as Florida's "Stand Your Ground" law, amended ch. 776, F.S., to create presumptions relating to the Castle Doctrine, to remove one's duty to retreat before using force in certain instances outside of one's home, and to provide immunity for those who lawfully use force in self-defense.

¹ Section 776.08, F.S. (2004), defined the term "forcible felony" as 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.

² Section 776.012, F.S. (2004).

³ Section 776.031, F.S. (2004).

⁴ *Id.*

⁵ Section 776.041, F.S. (2004).

⁶ *Hedges v. State*, 172 So.2d 824, 827 (Fla. 1965); *Pell v. State*, 122 So. 110 (Fla. 1929).

⁷ *Weiland v. State*, 732 So.2d 1044 (Fla. 1999).

⁸ *Id.* at 1049.

Castle Doctrine Presumptions

Senate Bill 436 created s. 776.013, F.S., which created the following presumptions related to the Castle Doctrine:

- A person has a reasonable fear of imminent peril or death or great bodily harm to themselves or another when using deadly force when:
 - The person against whom the deadly force was used was in the process of unlawfully entering or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, 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 using the deadly force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.⁹
- 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.

Duty to Retreat

The bill also created subsection (3) within s. 776.013, F.S., which removed one's duty to retreat before using force, including deadly force, *outside of one's home* so long as the person:

- Was not engaged in an unlawful activity;
- Was in a place where he or she had a right to be; and
- Reasonably believed that doing so was necessary to prevent death or great bodily harm or to prevent the commission of a forcible felony.

The bill made similar "duty to retreat" changes in other statutes. In s. 776.012, F.S., relating to the use of force in defense of persons, the bill specified that a person did not have a duty to retreat prior to using deadly force¹⁰ outside of one's home if:

- He or she reasonably believes that such force is necessary to prevent imminent¹¹ death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony; or
- Under those circumstances permitted pursuant to s. 776.013, F.S.¹²

In s. 776.031, F.S., relating to the use of force in defense of property, the bill specified that a person did not have a duty to retreat prior to using force or deadly force in accordance with the statute so long as the person was in a place they had a right to be.¹³

Immunity

The bill also created s. 776.032, F.S., which grants immunity from criminal prosecution¹⁴ and civil action to a person who used force or deadly force, so long as the force was used in accordance with ss.

⁹ Section 776.013(2), F.S., specifies that this presumption does not apply if the person:

- Against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person;
- Sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used;
- Who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or
- Against whom the defensive force is used is a law enforcement officer who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties and the officer identified himself or herself or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

¹⁰ Note that the bill did not remove one's duty to retreat in instances where *non-deadly* force is used.

¹¹ Note that the standard for using deadly force in s. 776.012, F.S., requires *imminence*, while the standard in s. 776.013, F.S., does not.

¹² Note that unlike s. 776.013, F.S., s. 776.012, F.S., removes one's duty to retreat prior to using deadly force even if the person is engaged in an unlawful activity and/or in a place where he or she does not have a right to be.

¹³ Note that unlike s. 776.013, F.S., s. 776.031, F.S., removes one's duty to retreat prior to using force or deadly force even if the person is engaged in an unlawful activity.

¹⁴ "Criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant. Section 776.032(1), F.S.

776.012, 776.013, and 776.031, F.S.¹⁵ The bill specified that a law enforcement agency could use standard procedures for investigating the use of force, but the agency could not arrest the person for using force unless it determined that there was probable cause that the force used was unlawful.¹⁶

The bill passed the Senate unanimously, passed the House with 94 favorable votes and 20 negative votes, and was signed by the Governor on April 26, 2005. It became effective October 1, 2005.¹⁷

Effect of the Bill

Castle Doctrine Presumptions

The bill repeals s. 776.013, F.S., in its entirety. As such, all of the above-described presumptions relating to the Castle Doctrine are abolished.

Duty to Retreat

The repeal of s. 776.013, F.S., also abolishes subsection (3), which removes one's duty to retreat prior to using force or deadly force outside of one's home so long as the person is not engaged in an unlawful activity and is in a place he or she has a right to be. However, the bill does not remove the "duty to retreat" provisions in ss. 776.012 and 776.031, F.S., that were added in 2005. As such, a person does not have a duty to retreat outside of his or her home:

- Prior to using non-deadly force if the person is in a place where he or she has a right to be and reasonably believes that such conduct is necessary to prevent or terminate the other's trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect.
- Prior to using deadly force if the person reasonably believes that 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.

Immunity

The bill makes a non-substantive conforming change to s. 776.032, F.S., to remove a reference to s. 776.013, F.S.

Discharging a Firearm

The bill also makes a conforming change to add the definition of the term "dwelling" that is currently in s. 776.013, F.S., to s. 790.15, F.S. (making it a first degree misdemeanor for a person to recklessly or negligently discharge a firearm outdoors on any property used primarily as the site of a dwelling.)

B. SECTION DIRECTORY:

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

Section 2. Amends s. 776.012, F.S., relating to use of force in defense of person.

Section 3. Amends s. 776.032, F.S., relating to immunity from criminal prosecution and civil action for justifiable use of force.

Section 4. Amends s. 790.15, F.S., relating to discharging firearm in public or on residential property.

Section 5. Makes the bill effective upon becoming a law.

¹⁵ Immunity is not granted if the person against whom force was used was a law enforcement officer who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer. Section 776.032(1), F.S.

¹⁶ Section 776.032(2), F.S.

¹⁷ Chapter 2005-27, L.O.F.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

The bill does not appear to have a fiscal 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:

This 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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES