

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

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

23 Section 1.

24 (1) The Legislature finds that persons have been criminally
 25 prosecuted and have been sentenced to mandatory minimum terms of
 26 imprisonment pursuant to s. 775.087 for threatening to use force

27 in a manner and under circumstances that would have been
 28 justifiable under ch. 776, had force actually been used.

29 (2) The Legislature intends to:

30 (a) Provide criminal and civil immunity to those who
 31 threaten to use force if the threat was made in a manner and
 32 under circumstances that would have been immune under ch. 776
 33 had force actually been used;

34 (b) Clarify that those who threaten to use force may claim
 35 self-defense if the threat was made in a manner and under
 36 circumstances that would have been justifiable under ch. 776 had
 37 force actually been used;

38 (c) Ensure that those who threaten to use force in a manner
 39 and under circumstances that are justifiable under ch. 776 are
 40 not sentenced to a mandatory minimum term of imprisonment
 41 pursuant to s. 775.087; and

42 (d) Encourage those who have been sentenced to a mandatory
 43 minimum term of imprisonment pursuant to s. 775.087, for
 44 threatening to use force in a manner and under circumstances
 45 that are justifiable under ch. 776, to apply for executive
 46 clemency.

47 Section 2. Section 776.012, Florida Statutes, is amended
 48 to read:

49 776.012 Use of force in defense of person.—A person is
 50 justified in using or threatening to use force, except deadly
 51 force, against another when and to the extent that the person
 52 reasonably believes that such conduct is necessary to defend

53 himself or herself or another against the other's imminent use
 54 of unlawful force. However, a person is justified in using or
 55 threatening to use ~~the use of~~ deadly force and does not have a
 56 duty to retreat if:

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

61 (2) Under those circumstances permitted pursuant to s.
 62 776.013.

63 Section 3. Subsections (1), (2), and (3) of section
 64 776.013, Florida Statutes, are amended to read:

65 776.013 Home protection; use of deadly force; presumption
 66 of fear of death or great bodily harm.—

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

72 (a) The person against whom the defensive force was used
 73 or threatened was in the process of unlawfully and forcefully
 74 entering, or had unlawfully and forcibly entered, a dwelling,
 75 residence, or occupied vehicle, or if that person had removed or
 76 was attempting to remove another against that person's will from
 77 the dwelling, residence, or occupied vehicle; and

78 (b) The person who uses or threatens to use defensive

79 force knew or had reason to believe that an unlawful and
 80 forcible entry or unlawful and forcible act was occurring or had
 81 occurred.

82 (2) The presumption set forth in subsection (1) does not
 83 apply if:

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

90 (b) The person or persons sought to be removed is a child
 91 or grandchild, or is otherwise in the lawful custody or under
 92 the lawful guardianship of, the person against whom the
 93 defensive force is used or threatened; or

94 (c) The person who uses or threatens to use defensive
 95 force is engaged in an unlawful activity or is using the
 96 dwelling, residence, or occupied vehicle to further an unlawful
 97 activity; or

98 (d) The person against whom the defensive force is used or
 99 threatened is a law enforcement officer, as defined in s.
 100 943.10(14), who enters or attempts to enter a dwelling,
 101 residence, or vehicle in the performance of his or her official
 102 duties and the officer identified himself or herself in
 103 accordance with any applicable law or the person using or
 104 threatening to use force knew or reasonably should have known

105 that the person entering or attempting to enter was a law
 106 enforcement officer.

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

115 Section 4. Section 776.031, Florida Statutes, is amended
 116 to read:

117 776.031 Use of force in defense of property ~~others~~.—A
 118 person is justified in using or threatening to use ~~the use of~~
 119 force, except deadly force, against another when and to the
 120 extent that the person reasonably believes that such conduct is
 121 necessary to prevent or terminate the other's trespass on, or
 122 other tortious or criminal interference with, either real
 123 property other than a dwelling or personal property, lawfully in
 124 his or her possession or in the possession of another who is a
 125 member of his or her immediate family or household or of a
 126 person whose property he or she has a legal duty to protect.
 127 However, a ~~the~~ person is justified in using or threatening to
 128 use ~~the use of~~ deadly force only if he or she reasonably
 129 believes that such conduct ~~force~~ is necessary to prevent the
 130 imminent commission of a forcible felony. A person does not have

131 a duty to retreat if the person is in a place where he or she
 132 has a right to be.

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

135 776.032 Immunity from criminal prosecution and civil
 136 action for justifiable use of force.—

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

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

156 Section 6. Subsection (2) of section 776.041, Florida

157 Statutes, is amended to read:

158 776.041 Use of force by aggressor.—The justification
159 described in the preceding sections of this chapter is not
160 available to a person who:

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

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

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

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

176 776.051 Use of force in resisting arrest or making an
177 arrest or in the execution of a legal duty; prohibition.—

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

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183 | a law enforcement officer.

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