

HB 1047

2013

1 A bill to be entitled
2 An act relating to defense of life, home, and
3 property; creating s. 776.001, F.S.; providing
4 legislative finding and intent; providing that the
5 defensive display of a weapon or firearm, including
6 the discharge of a firearm for the purpose of a
7 warning shot, does not constitute the use of deadly
8 force; providing immunity from prosecution for persons
9 acting in defense of life, home, and property from
10 violent attack or the threat of violent attack through
11 certain displays of or uses of force; creating s.
12 776.0011, F.S.; providing definitions; creating s.
13 776.033, F.S.; providing for the justifiable defensive
14 display of a firearm or weapon in certain
15 circumstances; amending s. 776.06, F.S.; limiting a
16 provision authorizing use of deadly force by law
17 enforcement or correctional officers; creating s.
18 775.0878, F.S.; providing an exemption from minimum
19 sentence requirements related to use of a weapon or
20 firearm for persons acting in self-defense or defense
21 of others; authorizing a departure from minimum
22 sentence requirements related to use of a weapon or
23 firearm for persons convicted of certain offenses who
24 meet specified requirements; providing an effective
25 date.
26

27 WHEREAS, the intent of mandatory minimum sentencing
 28 requirements is to deter crime without discouraging the lawful
 29 defense of life, home, and property, and

30 WHEREAS, the defensive display of a means of self-defense
 31 does not constitute the application of lethal force and is
 32 justified in defense of life, home, and property, and

33 WHEREAS, people acting to lawfully defend themselves are,
 34 at that point, already victims of crime, NOW, THEREFORE,

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

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38 Section 1. Section 776.001, Florida Statutes, is created
 39 to read:

40 776.001 Legislative findings and intent; defensive display
 41 of weapon or firearm; defense of life, home, and property.-

42 (1) The Legislature finds that it is unreasonable to
 43 prosecute a person for acting in a defensive manner. The
 44 Legislature intends to clarify that the defensive display of a
 45 weapon or firearm, including the discharge of a firearm for the
 46 purpose of a warning shot, does not constitute the use of deadly
 47 force and is a valid method of preventing or terminating an
 48 imminent or actual violent criminal attack.

49 (2) It is the intent of the Legislature to immunize a
 50 person from prosecution who acts in defense of life, home, and
 51 property from violent attack or the threat of violent attack by:

52 (a) Defensively displaying a weapon or firearm, if the
 53 person reasonably believes that it is necessary to warn an
 54 attacker to prevent or terminate an imminent or actual violent

55 criminal attack, including by the firing of a warning shot;
 56 (b) Using force, if the person reasonably believes that it
 57 is necessary to prevent or terminate an imminent or actual
 58 violent criminal attack; or
 59 (c) Using deadly force, if the person reasonably believes
 60 that it is necessary to prevent death or great bodily harm or to
 61 prevent or terminate the imminent or actual commission of a
 62 forcible felony.

63 Section 2. Section 776.0011, Florida Statutes, is created
 64 to read:

65 776.0011 Definitions.—As used in this chapter, the term:
 66 (1) "Defensive display" means the overt presentation of a
 67 weapon or the overt presentation, use, or discharge of a
 68 firearm, so long as the purpose of such action is limited to
 69 creating an apprehension that a person will, if necessary:
 70 (a) Use force in lawful defense of life, home, and
 71 property;
 72 (b) Lawfully defend against imminent or actual unlawful
 73 violence to a person; or
 74 (c) Use force to effect a lawful arrest.
 75 (2) "Unlawful activity" means any or all of the following:
 76 (a) Being engaged in the commission of a crime involving
 77 the use or threat of violence;
 78 (b) The illegal distribution of a controlled substance; or
 79 (c) Use of a dwelling, residence, or occupied vehicle to
 80 further activities described in paragraph (a) or paragraph (b).
 81 (3) "Use of deadly force" is not the lawful carrying or
 82 possession of a weapon or firearm, but means the application of

83 | any physical force described in subsection (4) which is
 84 | reasonably known to be likely to cause death or great bodily
 85 | harm. The term "use of deadly force" does not include a threat
 86 | to cause death or great bodily harm, including, but not limited
 87 | to, a defensive display, made when a person reasonably believes
 88 | that such conduct is necessary to defend themselves or another
 89 | against the actual or imminent use of unlawful force or to
 90 | prevent or terminate the imminent or actual commission of a
 91 | forcible felony.

92 | (4) "Use of force" is not the lawful carrying or
 93 | possession of a weapon or firearm, but means any or all of the
 94 | following directed at or upon another person or thing:

95 | (a) Words or actions that reasonably convey the threat of
 96 | force, including, but not limited to, threats to cause death or
 97 | great bodily harm to a person;

98 | (b) The presentation or display of a means of force that
 99 | reasonably conveys the threat of force; or

100 | (c) The application of physical force, including
 101 | application by a weapon or firearm, or through the actions of
 102 | another.

103 | Section 3. Section 776.033, Florida Statutes, is created
 104 | to read:

105 | 776.033 Defensive display of a firearm or weapon.—

106 | (1) (a) For the purposes of this section, the term
 107 | "defensive display of a firearm or weapon" includes:

108 | 1. Verbally informing another person that the person
 109 | possesses or has available a firearm or weapon.

110 | 2. Exposing or displaying a firearm or weapon in a manner

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111 that a reasonable person would understand was meant to convey
112 that it would be used, if necessary, to protect against the
113 commission of a forcible felony, the use or attempted use of
114 unlawful force or unlawful deadly force.

115 3. Overtly placing the person's hand on a firearm or
116 weapon while the firearm or weapon is contained in a pocket,
117 purse, holster, or other means of containment or transport.

118 (b) For the purposes of this section, the term "defensive
119 display of a firearm or weapon" does not include the mere
120 carrying of a firearm or weapon in any manner not prohibited by
121 law.

122 (2) A person is justified in the defensive display of a
123 firearm or weapon when the person reasonably believes that such
124 conduct is necessary to defend themselves or another against the
125 actual or imminent use of unlawful force or to prevent or
126 terminate the imminent or actual commission of a forcible
127 felony. A person does not have a duty to retreat if the person
128 is in a place where he or she has a right to be.

129 (3) This section does not apply to a person who:

130 (a) Intentionally provokes another person to use or
131 attempt to use unlawful force; or

132 (b) Is attempting to commit, committing, or escaping
133 immediately after the commission of a forcible felony.

134 (4) This section does not require the defensive display of
135 a firearm or weapon before the use of force or the threat of
136 force by a person who is otherwise justified in the use or
137 threatened use of force.

138 Section 4. Subsection (1) of section 776.06, Florida

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139 Statutes, is amended to read:

140 776.06 Deadly force by law enforcement or correctional
141 officers.—

142 (1) As applied to a law enforcement officer or
143 correctional officer who acts during and within the scope of his
144 or her official duties, the term "deadly force" means force that
145 is likely to cause death or great bodily harm and includes, but
146 is not limited to:

147 (a) The firing of a firearm in the direction of the person
148 to be arrested, even though no intent exists to kill or inflict
149 great bodily harm; and

150 (b) The firing of a firearm at a vehicle in which the
151 person to be arrested is riding.

152 Section 5. Section 775.0878, Florida Statutes, is created
153 to read:

154 775.0878 Exemption from minimum sentence requirement.—

155 (1) The Legislature finds that s. 775.087 is not intended
156 to apply to persons who are defending or attempting to defend
157 themselves or others from violent criminal attack. The
158 Legislature intends to establish that s. 775.087 does not apply
159 to persons who act in self-defense or defense of others and that
160 those persons are not subject to sentencing under s. 775.087.

161 (2) Notwithstanding any other provision of law, when
162 sentencing a defendant convicted of aggravated assault or
163 aggravated battery, the sentencing court shall depart downward
164 from the mandatory minimum sentence prescribed in s. 775.087(2),
165 provided that the sentencing or trial court finds the following
166 by a preponderance of the evidence:

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167 (a) The defendant did not act in the furtherance of
168 another criminal act;

169 (b) The defendant had established a prima facie case at
170 trial, during any proceeding, by stipulation, or at any stage of
171 the investigation that the act alleged was committed with
172 defensive intent; and

173 (c) The mandatory minimum sentence is not compelled for
174 the protection of the public.

175 (3) The state may appeal a departure from a mandatory
176 minimum sentence under this section.

177 Section 6. This act shall take effect upon becoming a law.