

By Senator Altman

16-00799A-13

20131446\_\_

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

16-00799A-13

20131446

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,

35  
36 Be It Enacted by the Legislature of the State of Florida:

37  
38 Section 1. Section 776.001, Florida Statutes, is created to  
39 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

16-00799A-13

20131446\_\_

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

16-00799A-13

20131446\_\_

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 possession  
93 of a weapon or firearm, but means any or all of the following  
94 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 to  
104 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  
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 weapon  
116 while the firearm or weapon is contained in a pocket, purse,

16-00799A-13

20131446\_\_

117 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 attempt  
131 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  
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 correctional  
143 officer who acts during and within the scope of his or her  
144 official duties, the term "deadly force" means force that is  
145 likely to cause death or great bodily harm and includes, but is

16-00799A-13

20131446\_\_

146 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:

167 (a) The defendant did not act in the furtherance of another  
168 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 the  
174 protection of the public.

16-00799A-13

20131446\_\_

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.