CRIMINAL OFFENSES AND PENALTIES

HB 71 — Motor Vehicle Speed Competitions

by Rep. Quinones and others (CS/SB 1428 by Judiciary Committee and Senator Haridopolos)

This bill increases the misdemeanor degree of unlawful racing from a second degree misdemeanor to a first degree misdemeanor, and the range of fines (minimum raised from $250 to $500; maximum raised from $500 to $1,000).

The bill also defines the term "conviction" and clarifies that the definitions of the terms "drag racing" and "racing" apply to motor vehicles. The unlawful racing offense relates to a number of proscribed acts. The bill clarifies that the proscribed acts include races, competitions, tests, or exhibitions. The bill also modifies the proscribed act of riding as a passenger in an unlawful race to indicate that the passenger must know he or she is riding as a passenger in an unlawful race.

The bill also provides that a law enforcement officer is authorized to impound the motor vehicle that was used in unlawful racing for a period of 10 business days, if the person who is arrested and taken into custody for the unlawful racing is the registered owner or co-owner of the vehicle. The law enforcement officer impounding the vehicle shall notify the Department of Highway Safety and Motor Vehicles of the impoundment. Any motor vehicle used for unlawful racing by a person within 5 years after the date of a prior conviction of that person for unlawful racing may be seized and forfeited as provided by the Florida Contraband Forfeiture Act, if the owner of vehicle is the person charged with unlawful racing.

If approved by the Governor, these provisions take effect October 1, 2005.
Vote: Senate 38-0; House 111-1

HB 207 — Criminal Acts/State of Emergency

by Rep. Benson and others (CS/SB 282 by Domestic Security Committee and Senators Aronberg and Fasano

This bill reclassifies the felony degree of certain unarmed burglary offenses and theft offenses, if any of those offenses are committed in an area that is subject to a state of emergency declared by the Governor under chapter 252, F.S. A reclassified offense is ranked one ranking level above the ranking of the offense committed and ranked in the offense severity level ranking chart of the Criminal Punishment Code. A person arrested for committing any of the specified burglary offenses in an area that is subject to a state of emergency may not be released until the person appears before a committing magistrate at a first-appearance hearing. Therefore, the person can only be admitted to bail after appearance before a judge.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 40-0; House 111-0

HB 233 — Unborn Quick Child

by Rep. Planas and others (CS/CS/SB 1526 by Justice Appropriations Committee; Criminal Justice Committee; and Senators Baker and Posey)

This bill expands the scope of s. 316.193(3), F.S., relating to driving under the influence, to include the death of an "unborn quick child" within the definition of DUI manslaughter.

The bill also expands the application of s. 782.09, F.S. Currently, that section punishes the willful killing of an unborn quick child "by any injury to the mother of such child which would be murder if it resulted in the death of such mother" as manslaughter, a second-degree felony. This bill creates new subsections which would punish the unlawful killing of an unborn quick child by any injury to the mother at the same level as if the mother had died.

In other words, if a person kills an unborn quick child by an act which would constitute first degree murder if the act were committed against the mother and she died, the offender could be charged with first-degree murder for the death of the unborn quick child. The same is true in cases of second- and third-degree murder, and manslaughter under the provisions of the bill. The bill specifies that the death of the mother resulting from the same act or criminal episode which caused the death of the unborn quick child shall not bar prosecution for the death of the unborn quick child.

The definition of viable fetus, as set forth in s. 782.071, F.S., is adopted for purposes of proving the death of an unborn quick child. A fetus is considered to be viable under the terms of s. 782.071, F.S., when "it becomes capable of meaningful life outside the womb through standard medical measures." s. 782.071(2), F.S.

Section 782.09, F.S., is further amended to provide that it does not authorize the prosecution of any person in connection with a termination of pregnancy pursuant to ch. 390, F.S.

If approved by the Governor, these provisions take effect October 1, 2005.
Vote: Senate 40-0; House 113-2

HB 319 — Freedom to Worship Safely Act

by Rep. Ryan and others (CS/SB 1096 by Judiciary Committee and Senators Smith, Klein, Atwater, Campbell, Aronberg, Wilson, and Crist)

This bill creates the Freedom to Worship Safely Act.

This bill creates s. 775.0861, F.S., which provides for the reclassification of certain felony offenses committed on the property of a religious institution while the victim is on the property for the purpose of attending or participating in a religious service. The term "religious service" is defined as a religious ceremony, prayer, or other activity according to a form and order prescribed for worship, including a service related to a particular occasion. The definition covers more than just traditional worship services, it covers activities such as daily prayers, weddings, and funerals.

The bill references the definition of religious institution at s. 496.404, F.S. Section 496.404(19), F.S., provides that the term "religious institution" means "any church, ecclesiastical or denominational organization, or established physical place for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on, and includes those bona fide religious groups which do not maintain specific places of worship. 'Religious institution' also includes any separate group or corporation which forms an integral part of a religious institution which is exempt from federal income tax under the provisions of s. 501(c)(3) of the Internal Revenue Code, and which is not primarily supported by funds solicited outside its own membership or congregation."

The definitions of religious institution and religious service are non-denominational.

The reclassification applies to any offense that involves the use or threat of physical force or violence against an individual, and includes the following offenses:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;
- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery;
- Aggravated stalking;
- Assault;
- Aggravated assault; and
- Battery.

The reclassification is as follows:

- A second degree misdemeanor is reclassified to a first degree misdemeanor.
- A first degree misdemeanor is reclassified to a third degree felony.
- A third degree felony is reclassified to a second degree felony.
- A second degree felony is reclassified to a first degree felony.
- A first degree felony is reclassified to a life felony.

The reclassification increases the maximum sentence that a court could impose for the offense, and also increases the "lowest permissible sentence" required under the Criminal Punishment Code, ss. 921.002-.0027, F.S. (The Criminal Punishment Code prescribes a mathematical formula for calculating the lowest permissible sentence for any offense. Offenses are categorized into 10 levels; higher numbered levels accrue more sentencing points than lower numbered levels.) Under the bill, a first degree misdemeanor reclassified to a third degree felony will be ranked as a Level 2 offense. (Currently, an unranked third degree felony defaults to Level 1.) A reclassified second or third degree felony will be ranked one level above its current ranking under the bill.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 38-0; House 113-0

HB 411 — Criminal Punishment Code

by Rep. Kravitz and others (CS/SB 316 by Justice Appropriations Committee and Senators Fasano, Lynn, and Crist)

The bill (Chapter 2005-33, L.O.F.) increases the level ranking of various offenses by ranking those offenses within the offense severity ranking chart of the Criminal Punishment Code. The bill ranks in Level 5 the previously unranked (Level 1) offenses of possession of child pornography, electronic transmission of child pornography, and electronic transmission of material harmful to a minor. The bill also ranks in level 6 the unranked (Level 1) offense of facilitating sexual conduct of or with a minor, and increases from a Level 6 to a Level 7 the offense of computer solicitation of a minor to commit an unlawful sex act. The result of these changes is that an offender convicted of any of these offenses is more likely (than under the law prior to these changes) to receive a prison sentence.

These provisions were approved by the Governor and take effect July 1, 2005.
Vote: Senate 39-0; House 114-0

SB 1020 — Police, Fire, SAR Dogs/Police Horses

by Senators Haridopolos and Fasano

Senate Bill 1020 modifies the current third degree felony offense in s. 843.19, F.S., to include elements of intentionally and knowingly causing great bodily harm, permanent disability or death, or the use of a deadly weapon upon a police dog, fire dog, search and rescue dog, or police horse.

The bill creates a first degree misdemeanor where a person actually and intentionally maliciously touches, strikes, or causes bodily harm to one of the animals protected by the statute.

Under the provisions of the bill, it is a second degree misdemeanor if a person intentionally or knowingly maliciously harasses, teases, interferes with, or attempts to interfere with one of the animals protected by the statute, while the animal is in the performance of its duties.

The bill also requires that where a person is convicted of an offense prohibited by the statute, he or she must make restitution for injuries caused to the animal and pay the replacement cost of the animal if, as a result of the offense, the animal can no longer perform its duties.

This bill substantially amends s. 843.19, F.S.

If approved by the Governor, these provisions take effect October 1, 2005.
Vote: Senate 39-0; House 117-1

CRIMINAL PROCEDURE

SB 538 — Sentencing/Victim Impact Evidence

by Senators Smith and Lynn

This bill clarifies that the state may introduce and subsequently argue victim impact evidence to the jury during the sentencing phase of a capital trial once it has provided evidence of the existence of one or more aggravating circumstances. The bill amends subsection (7) of s. 921.141, F.S. The bill is known as the "Caroline Cody Act."

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 39-0; House 118-0

SB 730 — Prohibition on Prostitution

by Senator Fasano

This bill provides that a police officer may testify as an offended party in an action regarding charges filed under s. 796.07, F.S., which prohibits lewdness, prostitution, and assignation. This new language is put in subsection (3) of this statute which addresses admissible testimony at trial to support these charges, such as the reputation of the defendant, the reputation of the place involved in the charge, and any person frequenting such place.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 39-0; House 115-1

SB 1440 — Time Limitations/Criminal Offenses

by Criminal Justice Committee

Section 775.15, F.S., sets forth time limitations for commencing criminal prosecutions, commonly known as the "statute of limitations." The purpose of the statute of limitations for a criminal prosecution is to protect people from being indefinitely threatened by possible criminal prosecution, which might otherwise be delayed until such a time when defense witnesses become unavailable, judges change office, or other time hazards develop which could impede an otherwise good defense. *State v. Hickman*, 189 So.2d 254 (Fla. 2nd DCA 1966), cert. denied, 194 So.2d 618 (1966).

This bill makes the statute of limitations easier to understand and more "user friendly" to practitioners and ordinary citizens by reorganizing it into a more logical and understandable format. The bill groups the general time limitation periods together, followed by the "administrative" provisions such as when an offense is committed and when a prosecution is commenced. The various exceptions and extensions to the general time limitation periods will become the final subsections in the statute.

This reorganization is technical and clarifying in nature; there are no substantive law changes made to s. 775.15, F.S.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 39-0; House 117-0

JUVENILE JUSTICE

HB 577 — Interstate Compact for Juveniles

by Rep. Needelman and others (CS/SB 274 by Governmental Oversight and Productivity Committee and Senators Crist and Lynn)

Currently, ss. 985.501-.507, F.S., regulate the movement of juveniles across state lines and are collectively referred to as the Interstate Compact on Juveniles. The compact was established in 1955 to manage the interstate movement of adjudicated youth, the return of non-adjudicated runaway youth, and the return of youth to states where they were charged with delinquent acts. Due to changes in technology, transportation, laws, and population, however, the original compact has become outdated and has led to increasing concern about the safety of the public, as well as the welfare of juveniles.

The national Council of State Governments, in cooperation with the federal Office of Juvenile Justice and Delinquency Prevention, has developed a new Interstate Compact for Juveniles and is currently supervising the introduction of this legislation throughout the United States and its territories. Currently, 21 states have enacted this new compact.

House Bill 577 revises the provisions of the current compact contained in s. 985.502, F.S. The new compact includes the following major changes to the original compact:

- Establishment of an independent compact operating authority to administer ongoing compact activity, including a provision for staff support.
- Gubernatorial appointments of representatives from member states to a national governing commission, which meets annually to elect the compact operating authority members and to attend to general business and rule-making procedures.
- Rule-making authority and provision for significant sanctions to support essential compact operations.
- A mandatory funding mechanism sufficient to support essential compact operations (staffing, data collection, training/education, etc.).
- Collection of standardized information and information-sharing systems.
- Coordination and cooperation with other interstate compacts including the Interstate Compact on the Placement of Children and the Interstate Compact for Adult Offender Supervision.
- Requirement of each state to create a state council.

In addition, the bill creates the Interstate Commission for Juveniles (commission) to oversee the administration and operations of the interstate movement of juveniles subject to the compact in the compacting states, an executive council to oversee the day-to-day activities of this commission, and the State Council for Interstate Juvenile Offender Supervision to oversee Florida's participation in the commission.

If approved by the Governor, these provisions take effect July 1, 2005, or upon ratification of the 35th state, whichever occurs later.
Vote: Senate 39-0; House 113-0

HB 1917 — Juvenile Justice

by Justice Appropriations Committee and Rep. Barreiro and others (CS/CS/SB 1978 by Children and Families Committee; Criminal Justice Committee; and Senator Crist)

This bill makes the following changes to ch. 985, F.S.:

- Classifies day treatment programs as a minimum-risk non-residential level of commitment, rather than a probation option (as they were before 2000).

- Creates a definition for the term "day treatment," which provides that day treatment is available during probation, conditional release, or commitment to a minimum-risk non-residential level and specifies the type of services that day treatment must include.

- Provides that the period of commitment for juveniles placed in the minimum-risk non-residential level may last up to six months for second degree misdemeanors.

- Requires parents to pay $1 for each day that their child is in the minimum-risk non-residential level in conformity with current fee requirements for home detention and probation status.

- Allows juveniles committed to a high-risk residential program to have court approved temporary release providing up to 72 hours of community access for family emergencies and in the final 60 days of placement for specified purposes.

- Requires the Department of Juvenile Justice (DJJ) to report the juvenile's treatment plan progress to the court quarterly, rather than monthly as now required, unless the court requests monthly reports.

- Requires DJJ to reconvene the Task Force on Juvenile Sexual Offenders and their Victims to re-evaluate the laws, practices, and procedures for serving juvenile sex offenders and their victims.

- Requires DJJ to establish a Task Force to study the feasibility of a certification system for juvenile justice provider staff.

- Allows the membership of juvenile justice county councils and circuit boards to consist of specified types of representation (rather than mandate it as does current law).

- Authorizes the payment of detention costs, subject to appropriation, for Highlands, Sumter, and Wakulla Counties during FY 2005-2006.

- Strengthens the DJJ employment background screening requirements.

- Updates several cross-references to conform with changes made by the bill.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 40-0; House 116-0

LAW ENFORCEMENT

SB 308 — Law Officer/Investigative Interview

by Senator Fasano

The bill amends current law relating to the rights of a law enforcement or a correctional officer while under investigation by his or her own agency. The bill requires the investigating agency to interview all identifiable witnesses, whenever possible, and provide the officer with all witness statements and the complaint before interviewing the accused officer.

This bill substantially amends s. 112.532, F.S.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 39-0; House 115-0

CS/CS/SB 328 — Automated External Defibrillators

by Justice Appropriations Committee; Community Affairs Committee; and Senators Fasano, Bennett, Lynn, Crist, and Klein

This bill requires the Florida Department of Law Enforcement (FDLE) to administer a competitive grant program during FY 2005-2006 for placing automated external defibrillators (AEDs) in law enforcement vehicles. Grants awarded by the FDLE are limited to amounts specifically appropriated each year for the AED grant program. The FDLE is authorized to spend up to three percent of the grant funds for administrative costs. The FDLE is required to adopt rules for administration by September 1, 2005.

Participation in the grant program by law enforcement agencies is discretionary. A law enforcement agency that does not serve a rural community must provide matching funds of at least 25 percent to be considered for funding. A law enforcement agency that serves a rural community must provide matching funds of at least 10 percent to be considered for funding. The FDLE is to give priority consideration to grant applications from rural law enforcement agencies.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 117-0

HB 345 — Capitol Police

by Reps. Gardiner and Coley (SB 1746 by Senator Wise)

This bill expands the powers and duties of FDLE, and Capitol Police, by granting traffic enforcement authority to all agents, inspectors, and officers of FDLE. The bill also amends the list of powers and duties of Capitol Police to require it to carry out transportation and protective services described in s. 943.68, F.S.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 39-0; House 112-0

CS/SB 656 — Deputy James M. Weaver Act

by Ways and Means Committee and Senators Haridopolos, Posey, Wise, Peaden, Fasano, Campbell, Klein, and Garcia

This bill provides that the sum of $50,000 in death benefits, adjusted as provided in s. 112.19(2)(j), F.S., shall be paid if a law enforcement, correctional, or correctional probation officer is accidentally killed at the scene of a traffic accident to which the officer responded or while enforcing what is reasonably believed to be a traffic law or ordinance.

The bill also provides, with certain exceptions, that no disciplinary action, demotion, or dismissal shall be undertaken by an agency against a law enforcement officer or correctional officer for an allegation of misconduct if the investigation of the allegation is not completed within 180 days after the date the agency receives notice of the allegation by a person authorized by the agency to initiate the investigation of the misconduct. The bill also provides a time limitation for completing an investigation and giving notice when the agency determines disciplinary action is appropriate, and provides for circumstances in which this limitations period may be tolled. The bill also provides a time limitation for completing a disciplinary action resulting from an investigation that is reopened, and provides circumstances in which the investigation may be reopened, notwithstanding the limitations period for commencing a disciplinary action.

The bill also revises the definition of the term "accredited college, university, or community college" in s. 943.22, F.S., which provides a salary incentive program for certain law enforcement officers who obtain a community college degree or bachelor's degree, or who complete 480 hours of approved career development program training. The revision adds to the definition of the term an accrediting agency or association that is recognized by the database created and maintained by the United States Department of Education.

If approved by the Governor, these provisions take effect July 1, 2005, and apply to actions arising on or after that date.
Vote: Senate 39-0; House 114-0

CS/SB 738 — Criminal Justice Standards and Training Commission

by Governmental Oversight and Productivity Committee and Senators Fasano, Haridopolos, Crist, Wise, Smith, and Webster

This bill revises the process regarding the appointment of some members of the Criminal Justice Standards and Training Commission (commission). In appointing the three sheriffs to the commission, the Governor shall choose each appointment from a list of six nominees submitted by the Florida Sheriffs Association, which shall submit its list before the expiration of the term of any sheriff member. In appointing the three chiefs of police to the commission, the Governor shall choose each appointment from a list of six nominees submitted by the Florida Police Chiefs Association, which shall submit its list before the expiration of the term of any police chief member.

In appointing the five law enforcement officers and one correctional officer of the rank of sergeant or below to the commission, the Governor shall choose each appointment from a list of 6 nominees submitted by a committee comprised of three members of the collective bargaining agent for the largest number of certified law enforcement bargaining units, two members of the collective bargaining agent for the second largest number of certified law enforcement bargaining units, and 1 member of the collective bargaining agent representing the largest number of state law enforcement officers in certified law enforcement bargaining units. At least one of the names submitted for each of the five appointments who are law enforcement officers must be an officer who is not in a collective bargaining unit.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-1; House 115-1

CS/SB 1436 — Automated External Defibrillators

by Community Affairs Committee and Senators Geller and Lynn

This bill provides legislative intent that each state and local law enforcement vehicle may carry an automated external defibrillator, and also authorizes a local government to use funds from forfeitures to purchase automated external defibrillators for use in law enforcement vehicles.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 40-0; House 118-0

SEXUAL PREDATORS AND OFFENDERS

HB 1877 — Jessica Lunsford Act

by Criminal Justice Committee and Reps. Dean, Kravitz, Rice, and others (CS/CS/SB 1216 by Justice Appropriations Committee; Criminal Justice Committee; and Senators Argenziano, Fasano, Klein, Aronberg, Haridopolos, Lynn, Smith, Crist, Miller, and Campbell)

The bill (Chapter 2005-28, L.O.F.), entitled the "Jessica Lunsford Act," contains the following major provisions:

- Mandates a 25-year minimum mandatory term of imprisonment followed by lifetime supervision with electronic monitoring for persons convicted of lewd and lascivious molestation of a child under 12 (currently there is no lifetime supervision mandate).

- Expands from 20 years to 30 years the period of time before someone can petition to have the sexual predator designation removed.

- Creates a new aggravating circumstance to qualify a murdering sexual predator for a death sentence.

- Creates two new 3rd degree felonies: (1) for harboring a registered sex offender/predator, and (2) for tampering with an electronic monitoring device.

- Strengthens and expands the background screening requirement for contract employees working on school grounds. There is already a screening requirement in current law. This amendment clarifies that the screening requirement applies to individuals who are permitted access on school grounds when students are present.

- Requires the Florida Department of Law Enforcement (FDLE) to provide information to local law enforcement officials about sexual predators and sexual offenders who fail to register or fail to respond to address verification attempts or otherwise abscond from registration requirements.

- Requires the Department of Corrections (DOC) to purchase and operate fingerprint-reading equipment for probation offices to better track the probationer when they are rearrested.

- Increases the penalty for the failure of a sex offender or sexual predator to register and creates a penalty for failure to report to the sheriff's office.

- Enhances the penalty for lewd and lascivious molestation of a child younger than 12 years of age from a 1st degree felony to a life felony.

- Requires county misdemeanor probation officials to search the sex offender/predator registry.

- Requires contracts with private misdemeanor probation providers to include procedures for accessing criminal history records of probationers.

- Requires the Office of Program Policy and Government Accountability (OPPAGA) to study every three years the registry and report findings to the Legislature every three years. Also, EDR is asked to look at sentencing information and plea negotiation practices and report back to the Legislature by March of 2006.

- Requires FDLE to implement a bi-annual check-in process for sexual predators and offenders. Twice a year the registered offenders will need to report to their local county jail or be subject to criminal prosecution.

- Almost triples the funding of electronic monitoring units used by state probation officials and requires the purchase of the new units to be competitively bid.

- Creates a task force within FDLE to examine the collection and dissemination of criminal history records.

- Directs DOC to review and report serious offenses committed by probationers.

- Directs DOC to develop a risk assessment system to monitor high risk offenders and to provide cumulative histories to the court on high risk sex offenders.

- Requires a court to make a finding that the sex offender on probation does not pose a danger to the public before he or she is released with or without bail on a violation of probation.

- Expands the types of mandatory conditions that the court must impose on sex offenders when they sentence them to community control supervision, such as maintaining a driving log and submitting to polygraph testing. We already have these conditions for

those offenders placed on sex offender probation; this amendment expands it to all community controllees.

- Prospectively mandates that the Parole Commission order electronic monitoring for persons who are leaving prison on conditional release and who have been convicted of various unlawful sex acts against a child 15 years of age or younger.

- Retroactively requires the court to electronically monitor registered sex offenders and sexual predators whose victims were 15 years of age or younger and who violate their probation or community control and the court imposes a subsequent term of probation and community control.

- Prospectively mandates the court to order electronic monitoring for persons placed on probation or community control who: are convicted or previously convicted of various unlawful sex acts against a child 15 years of age or younger; or are registered sexual predators.

These provisions were approved by the Governor and take effect September 1, 2005.
Vote: Senate 40-0; House 115-0

CS/SB 1354 — Sexual Offenders

by Children and Families Committee and Senators Fasano, Klein, and Lynn

This bill amends portions of chs. 947 and 948, F.S., to establish the narrow circumstances under which a sexual offender on conditional release, probation, or community control may have supervised contact with a minor. If the offender's victim was under the age of 18, the offender may only have supervised contact with a minor if it is approved by the Parole Commission or the sentencing court and is recommended by a qualified practitioner who has performed a risk assessment and issued a written report based upon a lengthy list of criteria. The visit may not take place unless the minor's parent or legal guardian has agreed in writing to the visit and has reviewed a safety plan detailing the acceptable conditions of contact during the visit.

The bill also prohibits the offender from accessing or using the Internet until the qualified practitioner approves a safety plan for the offender's use of the Internet or similar service.

If approved by the Governor, these provisions take effect January 1, 2006.
Vote: Senate 40-0; House 114-1

VICTIMS AND PUBLIC PROTECTION

CS/CS/SB 436 — Protection of Persons/Use of Force

by Judiciary Committee; Criminal Justice Committee; and Senators Peaden, Argenziano, Clary, Wise, Lawson, Crist, Baker, Bennett, Posey, Villalobos, Garcia, Fasano, Webster, Lynn, Haridopolos, King, Dockery, Diaz de la Portilla, Bullard, Campbell, Jones, Sebesta, Pruitt, Constantine, Smith, Alexander, Saunders, Aronberg, and Klein

This bill (Chapter 2005-27, L.O.F.) substantially amends s. 776.012, F.S., and s. 776.031, F.S. This bill also creates two new sections of the Florida Statutes: s. 776.013, F.S., and s. 776.032, F.S.

The bill permits a person to use force, including deadly force, without fear of criminal prosecution or civil action for damages, against a person who unlawfully and forcibly enters the person's dwelling, residence, or occupied vehicle. Additionally, the bill abrogates the common law duty to retreat when attacked before using deadly force that is reasonably necessary to prevent imminent death or great bodily harm.

Presumed Fear of Death or Great Bodily Harm

The bill creates a presumption that a defender in his or her home, in a place of temporary lodging, as a guest in the home or temporary lodging of another, or in a vehicle has a reasonable fear of imminent death or great bodily harm when an intruder is in the process of unlawfully and forcibly entering or enters. It also creates the presumption that the intruder intends to commit an unlawful act involving force or violence. These presumptions protect the defender from civil and criminal prosecution for unlawful use of force or deadly force in self-defense.

These presumptions about the intent of the intruder, however, do not apply when the intruder:

- Has a right to be in the home, place of temporary lodging, or vehicle, unless there is a domestic violence injunction or written pretrial supervision order of no contact against that person;
- Is seeking to remove a person lawfully under his or her care from a home, place of temporary lodging, or vehicle; or
- Is a law enforcement officer, acting lawfully, and the defender knew or had reason to know that the intruder was a law enforcement officer.

Additionally, a defender is not entitled to the benefit of the presumptions created by the bill if the defender was engaged in unlawful activity at the time of the unlawful and forcible entry or if the defender was using his or her home, place of temporary lodging, place of temporary lodging of another, or vehicle to further unlawful activity. The bill does not require any connection between the unlawful activity and the unlawful and forcible entry.

Expansion of Castle-Doctrine Concept

This bill expands the castle doctrine by expanding the concept of what is a "castle" and by expanding the group of persons entitled to the castle's protection.

Under the castle doctrine, a person has no duty to retreat from his or her "castle" (a person's home or workplace), before resorting to deadly force necessary for self-defense. The bill expands the concept of the castle to include attached porches, any type of vehicle, and places of temporary lodging, including tents.

Under the castle doctrine, only persons lawfully residing in a dwelling have no duty to retreat before resorting to deadly force necessary for self-defense. Under the provisions of the bill, invited guests in another person's "castle" will have the same rights to self-defense as a resident of the expanded castle.

Abrogation of Florida Common Law Duty to Retreat

Under Florida common law, a person has a duty to retreat, if outside his or her home or place of business, before resorting to deadly force reasonably believed necessary to prevent imminent death or great bodily harm. A person attacked within his or her home by a co-occupant or invitee must also retreat, if possible, within the home, but not from the home, before resorting to deadly force. Under the bill, a person will no longer have any duty to retreat, as long as the person is in a place where he or she is lawfully entitled to be.

Immunity

The bill provides that a person who acts in self-defense in accordance with the provisions of the bill is immune from criminal prosecution and civil actions. This provision is slightly different than the defense to civil actions under s. 776.085, F.S., in that the bill does not require proof that the intruder was attempting to engage in a forcible felony. Under the bill, the intruder's actual intent is irrelevant. The bill, in effect, creates a conclusive presumption of the intruder's malicious intent.

These provisions were approved by the Governor and take effect October 1, 2005.
Vote: Senate 39-0; House 94-20