

**Task Force on
CITIZEN SAFETY
and PROTECTION**



**Report of the
Governor's Task Force on Citizen
Safety and Protection**

FINAL

**Honorable Jennifer Carroll, Lieutenant Governor
Task Force Chair**

February 21, 2013

**REPORT OF THE GOVERNOR’S
TASK FORCE ON CITIZEN SAFETY AND PROTECTION**

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Mission Statement, Guiding Principles, and Scope of Work

MISSION STATEMENT

The Task Force on Citizen Safety and Protection will review Chapter 776, Florida Statutes and its implementation, listen to the concerns and ideas from Floridians, and make recommendations to the Governor and Florida Legislature to ensure the rights of all Floridians and visitors, including the right to feel safe and secure in our state.

GUIDING PRINCIPLES

1. Provide Forums where Floridians have the opportunity to be heard regarding Chapter 776, Florida Statutes.
2. Develop trust by bringing objectivity to the Task Force meetings, listening with an open mind and maintaining a calm and productive environment.
3. Ensure an open and honest discussion of relevant laws, rules, regulations, and programs.
4. Protect the rights of all Floridians and visitors to feel safe and secure in our state.

SCOPE OF WORK TO ACCOMPLISH MISSION

1. Determine where and when public hearings should be held in the state with a rationale based on Guiding Principles.
2. Define the Listening processes to be used in these public hearings.
3. Develop a communication plan with multiple and varied media forms to ensure all interested citizens have the opportunity to participate.
4. Review and discuss Chapter 776, Florida Statutes, and its implementation.
5. Conduct meetings and consolidate information including relevant data, including national comparisons.
6. Prepare a report for the Governor and the Florida Legislature by the state of the legislative session.

Methodology

The Task Force on Citizen Safety and Protection was established by Governor Rick Scott on March 22, 2012. Governor Scott appointed Lieutenant Governor Jennifer Carroll as Chairwoman and Reverend R.B. Holmes, Jr. as Vice Chairman. The 19 member Task Force was comprised of a diverse group of people from across the state. The Task Force held public hearings, took public testimonies, solicited ideas, reviewed all matters related to the rights of Floridians to feel safe and secure in the state, and drafted a report to present to the Governor and the Legislature.

The Task Force established Guiding Principles and a Scope of Work to accomplish the mission. In accordance, the Task Force established meeting dates and locations that encompassed a cross-section of the state in terms of geographic locations. The Task Force set meeting agendas that included presentations by subject matter experts and testimony from the general public. To accomplish the task of reaching the broadest segment of the population, all meetings were aired live on the Florida Channel and a website and social media accounts were developed to provide a transparent process and to allow input from citizens. The website, <http://www.flgov.com/citizensafety>, includes input from citizens, all materials reviewed by the Task Force, agendas, meeting minutes, speaker's biographies, archived videos of meetings, and contact information for the Task Force.

The Task Force held public meetings in Tallahassee, Longwood, Arcadia, West Palm Beach, Cutler Bay, Jacksonville, and Pensacola.

Subject matter experts included law enforcement investigators, prosecutors, public defenders, neighborhood watch, private security, civil rights organizations, second amendment rights organizations, and University of Florida Levin College of Law.

Core Recommendations

After holding seven public meetings across the state, hearing from a broad array of relevant subject matter experts, and considering 16,603 pieces of correspondence, 711 phone calls, 64 comment cards, 160 public comments at Task Force meetings, and over 30 documents, the Task Force recommends the following:

- 1. The Task Force concurs with the core belief that all persons, regardless of citizenship status, have a right to feel safe and secure in our state. To that end, all persons who are conducting themselves in a lawful manner have a fundamental right to stand their ground and defend themselves from attack with proportionate force in every place they have a lawful right to be.**

- 2. The Task Force recommends the Legislature examine the term “unlawful activity” as used in Chapter 776, Florida Statutes and provide a statutory definition to provide clarity to all persons, regardless of citizenship status, and to law enforcement, prosecutors, defense attorneys, and the judiciary.***

*Discussed definition of “unlawful activity” to give guiding language to the courts to ensure uniform application of the law with the intent to protect the innocent person.

- a) Task Force member State Attorney Katherine Fernandez Rundle proposed the definition of “unlawful activity” should exclude noncriminal violations as defined in Section 775.08(3), Florida Statutes.
- b) Task Force member Judge Krista Marx proposed that the definition should include temporal proximity of the unlawful activity to the use of force.
- c) Task Force member Public Defender Stacy Scott proposed that the definition of “unlawful activity” should exclude some county and municipal ordinance violations.
- d) Task Force member Edna Canino proposed that the definition exclude citizenship status.

The Task Force heard a number of examples related to the definition of “unlawful activity” used in Chapter 776, Florida Statutes. Questions were raised including whether the term applied to all unlawful activity including misdemeanors, ordinances, and minor traffic violations. Without a clear definition of the term “unlawful activity” the potential for inconsistent application of the law across the state may occur.

- 3. The Task Force recommends associations, law enforcement agencies, prosecutors, defense attorneys, and the judiciary increase training and education regarding self defense laws to ensure uniform and fair application of Chapter 776, Florida Statutes, and other related criminal statutes.**

The Task Force heard testimony from citizens, law enforcement, prosecutors, and public defenders that Chapter 776, Florida Statutes, although well intended, may not always be fairly and equitably applied across the state. The Task Force heard examples of specific self defense cases where individuals felt the law was not fairly applied. Although the Task Force's mission was not to retry individual cases, there was enough evidence presented to suggest that education among the parties including law enforcement, prosecutors, defense attorneys, the judiciary, and the citizens of the State of Florida could contribute to a more uniform, just, and fair application of the law.

- 4. The Task Force recommends the Legislature review applicable standards for recognized neighborhood watch groups, as defined in Section 30.60 and Section 166.0485, Florida Statutes, to define the role of neighborhood watch participants as limited to observing, watching, and reporting potential criminal activity to law enforcement. The participant's purpose is not to pursue, confront, or provoke potential suspects.**

The Task Force heard testimony from a neighborhood watch volunteer, crime prevention coordinator, and private security companies regarding standards for neighborhood watch groups. The standards for neighborhood watch groups ranged from the loosely organized to sophisticated organizations that employed written policies and procedures and strict standards for volunteers. The Task Force learned through these presentations that neighborhood watch volunteers are residents of their respective communities who volunteer their time; however, there are usually no requirements to participate or training provided to them. This could result in occurrences of volunteers acting outside the scope of the intent of neighborhood watch, which is to observe and report only, not to pursue, confront, or provoke potential suspects.

- 5. The Task Force recommends the Legislature examine the definition of “criminal prosecution”, as defined in Section 776.032(1), Florida Statutes, to remove any ambiguity for law enforcement to fully complete their investigation.**

The Task Force heard examples from law enforcement expressing concern for the definition of “criminal prosecution” and the affect of that definition on law enforcement’s ability and authority to investigate, detain or arrest a person engaged in use of force.

- 6. The Task Force has considered the Florida Supreme Court’s 2010 decision in Peterson v. State. The Task Force believes the pre-trial adversarial proceeding set out in that case is proper.**

The Task Force reviewed the Florida Supreme Court’s decision in Peterson v. State, which established a pre-trial adversarial proceeding for determining immunity for an individual claiming self-defense. Absent a clear procedure in current law for granting immunity under Section 776.032, Florida Statutes, the Florida Supreme Court established this procedure. The Task Force has determined that this procedure is adequate.

- 7. The Task Force recommends the Legislature consider whether the civil immunity provision should extend to innocent third-party victims.**

The Task Force discussed the possibility of innocent third-party victims being injured or killed during use of force incidents. Although an individual may be granted civil immunity for their use of force during that incident, it is not clear whether that immunity would apply even when innocent third-party victims are injured or killed due directly to the actions of that individual.

- 8. The Task Force recommends the Legislature consider funding further study of the correlation and causation to include variables such as race, ethnicity, gender, application and fairness of the law in regards to the expansion of self defense laws in the State of Florida, including a statistical comparison with other states. The Task Force recommends any report be issued by 2015 with periodic updates.**

The Task Force enlisted the assistance of the University of Florida, Levin College of Law, in compiling and analyzing data related to the use of force in defense of self and others within the State of Florida. Professor Monique Worrell of the university presented her findings to the members at the meeting held in West

Palm Beach. During her presentation, Professor Worrell provided data related to trends in homicides, justifiable homicide claims, crime rate, gun license applications, and tourism. However, Professor Worrell pointed out that conclusions regarding the impact of recent changes to Chapter 776, Florida Statutes, could not be drawn without a more complex analysis of the data.

- 9. The Task Force recommends the Legislature review Florida's 10-20-Life law to eliminate any unintended consequences.**
- 10. Vice Chair R.B. Holmes, Jr., State Attorney Kathleen Fernandez Rundle, and Public Defender Stacy Scott each submitted other specific recommendations, which are included in Appendix E of this report.**

APPENDIX A TASK FORCE CHARGE

Governor Scott, Lt. Governor Carroll Launch Task Force on Citizen Safety and Protection

Tallahassee, Fla. – Continuing his commitment to seeing that justice, due process, and the rule of law prevail in response to the tragic death of Trayvon Martin, Governor Rick Scott, along with Lt. Governor Jennifer Carroll, announced the members of the Task Force on Citizen Safety and Protection today. Lt. Governor Carroll will chair the task force along with vice chair Reverend R. B. Holmes Jr., the pastor of the Bethel Missionary Baptist Church in Tallahassee.

The purpose of the Task Force on Citizen Safety and Protection is to thoroughly review [Florida Statute Chapter 776](#) and any other laws, rules, regulations or programs that relate to public safety and citizen protection. They will make any necessary recommendations to the Governor and Legislature to improve public safety in Florida.

“We are a nation of laws, and I am committed to letting our legal system work to ensure the people of in our state are safe and protected,” Governor Scott said. “I have the utmost confidence that Lt. Governor Carroll and Reverend Holmes are the best people to lead the review of Florida’s citizen safety laws.”

Governor Scott convened the Task Force on Citizen Safety and Protection immediately after the conclusion of Assigned State Attorney Angela B. Corey’s investigation into the death of Trayvon Martin.

“We look forward to hearing from the citizens of our state about their concerns and recommendations for keeping our state safe,” said Lt. Governor Carroll. “Governor Scott has tapped a diverse and qualified group to carefully review our laws and our policies.”

In addition to Lt. Governor Carroll and Reverend Holmes, the other members of the task force include:

- Sheriff Larry Ashley, of Shalimar, Okaloosa County Sheriff's Office.
- State Representative Dennis Baxley, of Ocala, Florida House of Representatives, District 24.
- Former Florida Supreme Court Justice Kenneth B. Bell, of Pensacola, shareholder with Clark Partington Hart Larry Bond and Stackhouse.
- State Representative Jason Brodeur, of Sanford, Florida House of Representatives, District 33.
- Derek E. Bruce, of Orlando, attorney with Edge Public Affairs.

- Joseph A. Caimano Jr., of Tampa, criminal defense attorney with Caimano Law Group.
- Edna Canino, of Miami, president of the Florida Embassy of League of United Latin American Citizens, Council 7220.
- Gretchen Lorenzo, of Fort Myers, neighborhood watch coordinator for the Fort Myers Police Department.
- Judge Krista Marx, of West Palm Beach, Fifteenth Judicial Circuit of Florida.
- Maria Newman, of Melbourne, neighborhood watch volunteer with the City of Melbourne.
- Katherine Fernandez Rundle, of Miami, state attorney for the Eleventh Judicial Circuit.
- Stacy A. Scott, of Gainesville, assistant public defender with the Eighth Judicial Circuit.
- Mark Seiden, of Miami, self-employed attorney.
- State Senator David Simmons, of Altamonte Springs, Florida Senate, District 22.
- State Senator Gary Siplin, of Orlando, Florida Senate, District 19.

During its first meeting, the task force will lay the foundation for its work, develop a mission statement, and establish locations for future meetings and public hearings. Throughout the coming months, the task force will hold public hearings, take testimony, solicit ideas and review all matters related to the rights of all Floridians to feel safe and secure. The first meeting is tentatively scheduled for Tuesday, May 1, 2012, in Tallahassee at the Florida Department of Transportation headquarters. More details will be released in the near future.

The public is invited to provide input by e-mailing the task force at CitizenSafety@eog.myflorida.com. For more information, visit www.FLGov.com/citizensafety or follow the task force on [Twitter](#) @FLCitizenSafety.

#

APPENDIX B

TASK FORCE MEMBERSHIP



Jennifer Carroll
Chair
Lieutenant Governor, State of Florida
Former Florida State Representative
Education: MBA Degree, St. Leo University



Dr. R.B. Holmes
Vice-Chair
Pastor, Bethel Missionary Baptist Church
Tallahassee, Florida
Education: Undergraduate Degree, Graduate Degree, Central Florida Junior-College, (A.A. Degree); B.A. Degree, Malone College, Canton, Ohio; MA. Degree Methodist Theological Seminary, Delaware, Ohio; Doctoral Degree, Virginia Union University, Richmond, Virginia



Larry Ashley
Sheriff, Okaloosa County

Worked 22 years with Okaloosa County
Sheriff's Office and
Served as Sheriff since November, 2010
Education: University of Southern Mississippi



Representative Dennis Baxley
District 24, Ocala, Florida

Elected to the House in 2010
House of Representatives 2000-June 26, 2007
Speaker pro tempore
November 21, 2006-June 12, 2007
Occupation: Principal Owner, Vice President of
Hiers-Baxley Funeral Services
Education: Central Florida Community College,
A.A., 1972; Florida State University, B.S.,
Sociology/Psychology, 1974; Miami-Dade
Community College, A.S., Funeral Service
Degree, 1975



Kenneth B. Bell
Attorney and Shareholder, Clark Partington
Hart Larry Bond & Stackhouse; Former
Justice of Florida Supreme Court
Education: J.D., with honors, Florida State
College of Law (1982);
B.A, History, Davidson College (1978);
Diploma, Booker T. Washington High School,
Pensacola, Florida (1974)



Representative Jason Brodeur
District 33 Sanford, Florida
Elected to the House in 2010
Occupation: Health Care Consultant
Education: University of Florida, B.S., Food &
Resource Economics 1993-1997; University of
Florida, M.B.A., 2001-2003; Interfraternity
Council, Student Government



Derek E. Bruce
Attorney, Edge Public Affairs
Education: B.S., Law Degree and M.B.A.
University of Florida



Edna E. Canino
Attorney; President of Florida Embassy
LULAC Miami, FL
Education: Bachelor of Arts, University of
Texas; Juris Doctor, Southern Methodist
University, School of Law, Dallas, Texas



Joseph "Joe" A. Caimano, Jr.
Attorney, Caimano Law Firm
Education: Law Degree, Stetson University
College of Law



Jerry L. Demings
Sheriff, Orange County, Florida
Education: Bachelor of Science in Finance,
Florida State University
Master of Business Administration, Florida
Metropolitan University/Orlando College
Graduate of the 194th session of the Federal
Bureau of Investigation's National Academy,
Graduate of the 23rd session of the FBI's
National Executive Institute



Gretchen Lorenzo
Occupation: Crime Prevention Coordinator
Fort Myers, Florida



Maria Newman
Neighborhood Watch Volunteer
Occupation: Retired, Texas Instruments



Krista Marx
Judge, 15th Judicial Circuit – Circuit
Criminal
West Palm Beach, Florida
Elected to Bench 1998
Education: B.A. and Law Degree Florida State
University



David L. Perry
Chief, Florida State University Police
Department
Tallahassee, FL
Education: Criminal Justice Albany State



Katherine Fernandez Rundle
State Attorney, Miami-Dade County
since 1993

Education: B.A., University of Miami;
Graduate Degree in Criminology,
Law Degree, University of Cambridge, England

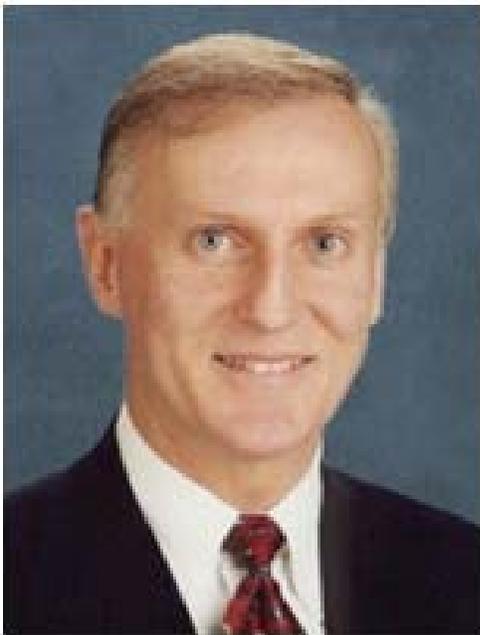


Stacy A. Scott
Public Defender
8th Judicial Circuit
Gainesville, FL

Education: Bachelor's Degree,
University of Florida;
Law Degree,
University Of Florida College Of Law



Mark Seiden
Attorney
Miami Based Criminal Defense Lawyer,
Miami, Florida
Education: Law Degree, University of Miami
School of Law;
Undergraduate Degree (Psychology and
Sociology) University of Miami



Senator David Simmons
Senate District 22, Altamonte Springs,
Florida
Elected to the Senate in 2010
Majority (Republican) Whip, 2010-2012
House of Representatives, 2000-2008
Occupation: Attorney, Financial Managing
Partner of de Beaubien, Knight, Simmons,
Mantzaris, & Neal, LLP
Education: Vanderbilt University
Law School, J.D., 1977;
Tennessee Technological University,
B.S., 1974



Senator Gary Siplin
Senate District 19, Orlando, Florida
Occupation: Attorney
Education: Duquesne University, J.D.;
University of Pittsburgh, M.A., Public and
International Affairs; Johnson C. Smith
University, B.A., Political Science

APPENDIX C
MAP OF TASK FORCE MEMBERS
AND MEETING LOCATIONS

APPENDIX D
CHAPTER 776, FLORIDA STATUTES

The 2012 Florida Statutes

CHAPTER 776 JUSTIFIABLE USE OF FORCE

- 776.012 Use of force in defense of person.
- 776.013 Home protection; use of deadly force; presumption of fear of death or great bodily harm.
- 776.031 Use of force in defense of others.
- 776.032 Immunity from criminal prosecution and civil action for justifiable use of force.
- 776.041 Use of force by aggressor.
- 776.05 Law enforcement officers; use of force in making an arrest.
- 776.051 Use of force in resisting arrest or making an arrest or in the execution of a legal duty; prohibition.
- 776.06 Deadly force.
- 776.07 Use of force to prevent escape.
- 776.08 Forcible felony.
- 776.085 Defense to civil action for damages; party convicted of forcible or attempted forcible felony.

776.012 Use of force in defense of person.—A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat if:

(1) He or she 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; or

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

History.—s. 13, ch. 74-383; s. 1188, ch. 97-102; s. 2, ch. 2005-27.

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

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

(a) The person against whom the defensive force was used was in the process of unlawfully and forcefully 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

(b) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

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

(a) 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, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or

(b) The person or persons 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; or

(c) The person 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

(d) The person against whom the defensive force is used is a law enforcement officer, as defined in s. 943.10(14), 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 in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

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

(4) 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.

(5) As used in this section, the term:

(a) "Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

(b) "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

(c) "Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

History.—s. 1, ch. 2005-27.

776.031 Use of force in defense of others.—A person is justified in the use of force, except deadly force, against another when and to the extent that the person 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. However, the person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent the imminent commission of a forcible felony. A person does not have a duty to retreat if the person is in a place where he or she has a right to be.

History.—s. 13, ch. 74-383; s. 1189, ch. 97-102; s. 3, ch. 2005-27.

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

(1) A person who uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer, as defined in s. 943.10(14), 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. As used in this subsection, the term “criminal prosecution” includes arresting, detaining in custody, and charging or prosecuting the defendant.

(2) A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (1), but the agency may not arrest the person for using force unless it determines that there is probable cause that the force that was used was unlawful.

(3) The court shall award reasonable attorney’s fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (1).

History.—s. 4, ch. 2005-27.

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

(1) Is attempting to commit, committing, or escaping after the commission of, a forcible felony; or

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

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

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

History.—s. 13, ch. 74-383; s. 1190, ch. 97-102.

776.05 Law enforcement officers; use of force in making an arrest.—A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. The officer is justified in the use of any force:

(1) Which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest;

(2) When necessarily committed in retaking felons who have escaped; or

(3) When necessarily committed in arresting felons fleeing from justice. However, this subsection shall not constitute a defense in any civil action for damages brought for the wrongful use of deadly force unless the use of deadly force was necessary to prevent the arrest from being defeated by such flight and, when feasible, some warning had been given, and:

(a) The officer reasonably believes that the fleeing felon poses a threat of death or serious physical harm to the officer or others; or

(b) The officer reasonably believes that the fleeing felon has committed a crime involving the infliction or threatened infliction of serious physical harm to another person.

History.—s. 13, ch. 74-383; s. 1, ch. 75-64; s. 1, ch. 87-147; s. 54, ch. 88-381; s. 1191, ch. 97-102.

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

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

(2) A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, is not justified in the use of force if the arrest or execution of a legal duty is unlawful and known by him or her to be unlawful.

History.—s. 13, ch. 74-383; s. 1192, ch. 97-102; s. 1, ch. 2008-67.

776.06 Deadly force.—

(1) The term “deadly force” means force that is likely to cause death or great bodily harm and includes, but is not limited to:

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

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

(2)(a) The term “deadly force” does not include the discharge of a firearm by a law enforcement officer or correctional officer during and within the scope of his or her official duties which is loaded with a less-lethal munition. As used in this subsection, the term “less-lethal

munition” means a projectile that is designed to stun, temporarily incapacitate, or cause temporary discomfort to a person without penetrating the person’s body.

(b) A law enforcement officer or a correctional officer is not liable in any civil or criminal action arising out of the use of any less-lethal munition in good faith during and within the scope of his or her official duties.

History.—s. 13, ch. 74-383; s. 1, ch. 99-272.

776.07 Use of force to prevent escape.—

(1) A law enforcement officer or other person who has an arrested person in his or her custody is justified in the use of any force which he or she reasonably believes to be necessary to prevent the escape of the arrested person from custody.

(2) A correctional officer or other law enforcement officer is justified in the use of force, including deadly force, which he or she reasonably believes to be necessary to prevent the escape from a penal institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.

History.—s. 13, ch. 74-383; s. 7, ch. 95-283; s. 1193, ch. 97-102.

776.08 Forcible felony.—“Forcible felony” means 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.

History.—s. 13, ch. 74-383; s. 4, ch. 75-298; s. 289, ch. 79-400; s. 5, ch. 93-212; s. 10, ch. 95-195.

776.085 Defense to civil action for damages; party convicted of forcible or attempted forcible felony.—

(1) It shall be a defense to any action for damages for personal injury or wrongful death, or for injury to property, that such action arose from injury sustained by a participant during the commission or attempted commission of a forcible felony. The defense authorized by this section shall be established by evidence that the participant has been convicted of such forcible felony or attempted forcible felony, or by proof of the commission of such crime or attempted crime by a preponderance of the evidence.

(2) For the purposes of this section, the term “forcible felony” shall have the same meaning as in s. 776.08.

(3) Any civil action in which the defense recognized by this section is raised shall be stayed by the court on the motion of the civil defendant during the pendency of any criminal action which forms the basis for the defense, unless the court finds that a conviction in the criminal action would not form a valid defense under this section.

(4) In any civil action where a party prevails based on the defense created by this section:

(a) The losing party, if convicted of and incarcerated for the crime or attempted crime, shall, as determined by the court, lose any privileges provided by the correctional facility, including, but not limited to:

1. Canteen purchases;
2. Telephone access;
3. Outdoor exercise;
4. Use of the library; and
5. Visitation.

(b) The court shall award a reasonable attorney's fee to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney; however, the losing party's attorney is not personally responsible if he or she has acted in good faith, based on the representations of his or her client. If the losing party is incarcerated for the crime or attempted crime and has insufficient assets to cover payment of the costs of the action and the award of fees pursuant to this paragraph, the party shall, as determined by the court, be required to pay by deduction from any payments the prisoner receives while incarcerated.

(c) If the losing party is incarcerated for the crime or attempted crime, the court shall issue a written order containing its findings and ruling pursuant to paragraphs (a) and (b) and shall direct that a certified copy be forwarded to the appropriate correctional institution or facility.

History.—s. 1, ch. 87-187; s. 72, ch. 96-388.

APPENDIX E
TASK FORCE MEMBER LETTERS

Bethel Missionary Baptist Church



CHURCH OFFICE 850/222-8440
FAX 850/222-5873

224 North Martin Luther King, Jr. Boulevard
Tallahassee, Florida 32301

Dr. R. B. Holmes, Jr., Pastor

November 7, 2012

**Honorable Lieutenant Governor
Jennifer Carroll**
Executive Office of Governor Rick Scott
400 S Monroe St
Tallahassee, FL 32399

Dear Lieutenant Governor Carroll:

I have been honored to serve as the Vice Chair of the Task Force on Citizen Safety and Protection, and I thank you for inviting me to participate. I wanted to take this opportunity before the upcoming hearing to express my support for State Attorney Katherine Fernandez Rundle's suggested reform language and to build upon her thoughtful recommendations with some of my own. I think these suggested reforms will together help ensure greater public safety in Florida without undermining the original goals of the legislators who enacted our Stand Your Ground law.

Although the law is meant to protect law-abiding citizens, a statewide investigation by the Tampa Bay Times found that the majority of the people shielded by Florida's Stand Your Ground law had previous arrest records. A significant number had even been previously caught threatening others with a gun. The Tampa Bay Times's investigation, which included an examination of over 200 Stand Your Ground cases, has received national accolades and was featured in this quarter's Investigative Reporters & Editors Journal.

Other studies have shown that this law is associated with an increased death toll that falls disproportionately on minority groups. A New York City analysis of FBI data showed that justifiable homicides in Florida increased by 192% after we passed this law. Moreover, an investigation by the Urban Institute revealed a troubling racial disparity, finding that, even when controlling for age differences, whites who kill blacks are far more likely to be protected by this law than blacks who kill whites. Meanwhile, researchers at Texas A&M disproved the notion that Stand Your Ground laws deter violent crime. Accordingly, I support the amendments suggested by Ms. Rundle. She has raised similar concerns as those articulated by Allie Braswell at the September 13th Task Force meeting regarding the nature of the law's presumptions, immunity

**Honorable Lieutenant Governor
Jennifer Carroll
Page 2**

provisions, and protection afforded to initial aggressors. As Ms. Rundle has eloquently explained, an irrebuttable presumption has no place in criminal law. Neither does an immunity provision that ties the hands of law enforcement and prosecutors and upends our criminal justice system. These were consequences of the law that I imagine the legislature did not intend, and they can be easily corrected by making the changes Ms. Rundle proposes. I also appreciate her definition of "unlawful activity" and suggest we recommend it be added to the law.

In addition to Ms. Rundle's suggested reform language, I recommend that we reconcile the Task Force's desire to keep the "no duty to retreat" provision with the valid concerns expressed by law enforcement, prosecutors, civil rights groups, and citizens, by clarifying that while there is no affirmative duty to retreat, judges and juries may consider the clear possibility of safe retreat in determining whether the use of deadly force was necessary. If a person could simply drive away from an unarmed attacker, then shooting the attacker is not necessary and should not be protected under Florida's self-defense laws.

I also suggest that the legislature clarify that the presumptions do not apply once an intruder is in retreat. Shooting a person in the back, as he is trying to escape, is, by definition, not self-defense. As the law is written, it does not create an exception for trespassers in retreat, so the courts are currently divided between common sense and the letter of the law.

Again, I thank you for the giving me the opportunity to serve as Vice Chair of this Task Force. I trust that we will use what we have learned to create a fair law that respects all Floridians' right to self-defense while promoting safety and decreasing violence in all of our communities.

Respectfully submitted,



**Reverend Dr. R. B. Holmes, Jr.
Vice-Chair, Governor's Task Force on Citizen Safety and Protection**



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KATHERINE FERNANDEZ RUNDLE
STATE ATTORNEY

TELEPHONE (305) 547-0100

November 9, 2012

Honorable Jennifer Carroll
Lieutenant Governor
Executive Office of Governor Rick Scott
400 S. Monroe Street
Tallahassee, FL 32309

Re: Task Force on Citizen Safety and
Protection

Dear Lieutenant Governor Carroll:

It has been an honor to serve on the Governor's Task Force on Citizen Safety and Protection during these last six months. I have learned much from listening to the citizens of Florida as well as the other members of this Task Force, and I realize that our legislators worked hard and had good intentions when the amendments to our self-defense statutes were passed in 2006. I have also seen not only from the experiences in my Office, but from the testimony of our citizens and experts who came before our Task Force, that the law has had some consequences which I believe were unintended.

I am sorry that my duties prevent me from attending this last meeting of the Task Force during which recommendations will be discussed and voted on. However, I am again putting forth the suggestions and recommendations I made previously that I believe will clarify and improve the laws to insure that our citizens have a right to defend themselves at the same time insuring that the laws are enforced in a fair and just manner. I also support any suggestions that will improve education to the public on what the law on self defense is and how they can protect themselves.

Thank you again for the honor that was given to me by being a member of this very important Task Force.

Sincerely,

KATHERINE FERNANDEZ RUNDLE
State Attorney

Attachments

**SUGGESTED AMENDMENTS TO THE SELF DEFENSE STATUTES OFFERED BY
STATE ATTORNEY KATHERINE FERNANDEZ RUNDLE**

Note: Strike-throughs are deletions in the present statute, and underlines are additions to the present statute. The amendments are presented first, followed by the explanation of the purpose for the amendment.

I. 776.013. Home protection; use of deadly force; ~~presumption~~ inference of fear of death or great bodily harm

(1) The following circumstances gives rise to an inference that a ~~A person is presumed to have~~ held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if:

(a) The person against whom the defensive force was used was in the process of unlawfully and forcefully 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

(b) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(2) The inference ~~presumption~~ set forth in subsection (1) does not apply if:

(a) 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, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or

(b) The person or persons 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; or

(c) The person 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

(d) The person against whom the defensive force is used is a law enforcement officer, as defined in s. 943.10(14), 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 in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

(3) A person who is not engaged in an unlawful activity, who does not initially provoke the force, and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent imminent peril of death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

(4) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle, gives rise to an inference that the person is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

(5) As used in this section, the term:

(a) "Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

(b) "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

(c) "Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

PURPOSE OF THESE AMENDMENTS:

There is an issue of whether the present statutory presumption creates an irrebuttable presumption. When there is an irrebuttable presumption, the trier of fact is required to accept the fact proved by that presumption as true, and cannot look at evidence that may be contrary. If the presumption is rebuttable, then the trier of fact can look to evidence that may tend to disprove the fact to determine if it is proved. In criminal law, the statutes do not have irrebuttable presumptions, but rather inferences, which is substantially the equivalent to rebuttable presumptions. In reviewing this statute, many attorneys disagree as to whether it creates an irrebuttable presumption concerning whether a person under the enumerated circumstances had a reasonable fear of imminent peril of death or great bodily harm. An appellate court may one day have to make that decision. The statute has removed all requirements of reasonableness on the part of the person who uses deadly force against someone who has in effect trespassed in their home, which includes the attached porch. Thus, a person who without permission, enters another's yard to ask directions, or sell something, and forcefully opens a porch door, can be killed without questions being asked first. That person, who can be a child, may be conclusively presumed to have been there to do violence, and no evidence presented to the contrary can legally make a difference. Due to this present uncertainty about the presumption, the statute should be clarified now so that there is no question that it is not a conclusive presumption. It is suggested that it be put in terms of an inference, similar to the inferences that can be found in the theft statutes (s. 812.022).

The issue of whether the provisions of s. 776.013(3) should apply to initial aggressors has been the one which has captured the most attention. The statute should be amended to clearly indicate that it does not apply to someone who is the initial aggressor.

Sec. 776.013(3) does not contain a requirement that the threat be imminent only that the defendant reasonably believes it is necessary to use deadly force to prevent death or great bodily harm or the commission of a forcible felony. If the person is engaged in unlawful activity, the Stand Your Ground provision in s. 776.013(3), i.e., no duty to retreat provision, would not apply. However, s. 776.012 would apply. That statute states there is no duty to retreat when the person believes that they are in imminent danger of great bodily harm or death or they are trying to

prevent the imminent commission of a forcible felony. The only advantage to the application of s. 776.013(3) is there is no requirement of imminency of the threat. To be consistent there should be a requirement of imminency.

At the task force meetings there were some questions about what does “unlawful activity” mean. The case law has provided guidance in this area and there is no need to amend the statute. However, if it has to be defined, the following is suggested:

(d) “Unlawful activity” means any criminal activity that is punishable under the laws of this state, but does not include activity that is a ‘noncriminal’ violation as defined in s. 775.08(3).

II. 776.031. Use of force in defense of property ~~others~~

A person is justified in the use of force, except deadly force, against another when and to the extent that the person 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. However, the person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent the imminent commission of a forcible felony. A person does not have a duty to retreat if the person is in a place where he or she has a right to be.

PURPOSE OF AMENDMENT

This is really just an amendment in the title of the statute. It has been pointed out that since this statute speaks to what a person may do to protect themselves from a trespass or other interference with property, the title is misleading. In addition s. 776.012 is titled "use of force in defense of person," which includes others, so the present title of this statute is erroneous.

III. 776.032. ~~Immunity from~~ Affirmative defense in criminal prosecution and civil action for justifiable use of force

(1) It shall be an affirmative defense in any criminal prosecution or civil action if a ~~A person who~~ uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 ~~is justified in using such force and is immune from criminal prosecution and civil action for the use of such force,~~ unless the person against whom force was used is a law enforcement officer, as defined in s. 943.10(4), 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. ~~As used in this subsection, the term "criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant.~~ The determination of whether a person is justified in using such force shall be made by a jury. In those cases where no material facts are in dispute, that determination shall be made by the court pursuant to the applicable rules of procedure.

(2) A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (1), but the agency may not arrest the person for using force unless it determines that there is probable cause that the force that was used was unlawful.

(3) The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the jury or court finds that the defendant was justified in the use of force ~~immune from prosecution~~ as provided in subsection (1).

PURPOSE FOR THESE AMENDMENTS:

No rationale was set forth by the Legislature to remove the issue of self defense away from a jury and give it to a judge when there are issues of fact that are in dispute. No persuasive rational basis has been provided by testimony at the hearings.

Florida has long recognized that prosecutors are the initial gatekeepers of whether to charge a person with a violation of the criminal laws. State attorneys are one person grand juries under s. 27.04. Cases throughout the state have shown that judges are in no better position than juries to make these factual and credibility determinations and to apply the law. Florida has acknowledged the right to a jury trial, by both the state and the defendant. In fact, by criminal rule, the defendant cannot waive the right to a jury trial without the state's consent. Furthermore, Florida, by both statute and case law, has determined that affirmative defenses should be raised at trials and not decided pretrial by judges. See for example cases involving insanity, involuntary intoxication, entrapment, consent, duress, and prior to 10/1/2005, self defense.

Pretrial immunity does not significantly shorten the process for the defendant or the victim. As testified to at the hearings by the public defenders, these mini trials are usually not conducted until all discovery is completed in the case, many times right before trial. Thus, it does not save any significant expenses when the motion is granted. However, if the motion is denied, unless

the case is settled, both the defendant and the victims must then go through the additional expense, emotionally and financially of a jury trial.

Florida has always provided for a mechanism to determine these issues prior to trial. If the facts are not in dispute, a judge can make a legal determination as to whether the defendant has a legal defense, through a motion to dismiss under Florida Rule of Criminal Procedure 3.190(c)(4) or by the civil summary judgment rules.

Even if the immunity provisions pertaining to the actual prosecution of the person were to remain, the definition of prosecution to include the “arresting” or “detaining in custody” of the defendant, must be deleted as it has led to confusion among law enforcement and has allowed defendants to use this provision as grounds to suppress evidence that was found by police after the arrest or detention of the defendant. That evidence can be either physical or can be confessions. As such the following is proposed:

(1) A person who uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer, as defined in s. 943.10(4), 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. As used in this subsection, the term “criminal prosecution” ~~means includes arresting, detaining in custody, and~~ charging or prosecuting the defendant.

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Reply to:

September 7, 2012

Lt. Governor Jennifer Carroll, Chair
Task Force on Citizen Safety and Protection

Dear Lt. Governor Carroll:

It is clear from the public meetings held by the Task Force to date and from statewide polling that the majority of Floridians favor an expansive right to self defense and the 'Stand Your Ground' law. Therefore, the Stand Your Ground provisions of Chapter 776.012, 776.013, 776.031, 776.023, and 776.041 should remain intact, with only minor additions and clarifications to the statutes. Based on the public meetings, and upon thorough review of the body of law relating to self defense, I am submitting the following recommendations for review by the Task Force:

1. **The right to a pre-trial adversarial immunity determination should be added to the provisions of F.S. 776.032. As written, 776.032 provides a person who uses forces as permitted in s.776.012, s.776.013 or s.776.031 with immunity from criminal prosecution and civil action. However, the statute does not outline a procedural mechanism for determining whether a person is entitled to such immunity. The courts have defined the appropriate procedure through case law. That procedure involves a pre-trial, adversarial hearing in which a judge weighs the evidence, including the credibility of witnesses, and determines whether the defendant has proven by a preponderance of the evidence that he/she was justified in the use of force and is therefore immune from prosecution. It is this pre-trial hearing process that gives true meaning the immunity provisions of the statute.**

F.S. 776.032 should be amended to add the right to a pre-trial, adversarial hearing in which a judge weighs the evidence, including the credibility of witnesses, to determine whether a defendant is immune from prosecution.

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Reply to:

2. Define the term “unlawful activity”: There is no duty to retreat where the person who uses force was not engaged in any unlawful activity other than the crime(s) for which the person asserts the justification. F.S. 776.013(3). However, the statute does not provide any guidance or limits on what types of ‘unlawful activity’ would preclude a citizen from availing themselves of the Stand Your Ground provisions of the law. As written, the term ‘unlawful activity’ is too broad, and encompasses even the most minor types of criminal activity (i.e. open container violations, driving while license suspended), and potentially includes non-criminal activity (i.e. speeding or jay walking).

The term ‘unlawful activity’ should be defined to include only forcible felonies as defined by 776.085, and possession of a firearm by a convicted felon.

3. Clarify whether the retreat of the person against whom the force is about to be used impacts the right of the person using force to continue to use said force: The statute as written does not address whether the retreat of the person against whom force is about to be used (the ‘victim’) is relevant to the right of a citizen to use force in self defense. Case law has addressed specific situations in which the ‘victim’ may have been retreating from the altercation, with varied results. However, a more uniform statewide standard might be beneficial to all concerned. Clarifying language could be inserted into 776.012, 776.013, and 776.031 and could read as follows:

“A person is not justified in the use of force against another unarmed person if prior to the use of force, the other unarmed person clearly and unequivocally retreats from the confrontation and immediately terminates any threat of the use of force against any person”.

4. Narrow the definition of “criminal prosecution” in 776.032: 776.032 currently defines “criminal prosecution” to include “arresting, *detaining in custody*, and charging or prosecuting the defendant”. (Emphasis added). Law enforcement has a duty to determine whether there is probable cause to arrest any individual. In order to make that determination, temporary detention of an individual may be required. Therefore, the phrase ‘*detaining in custody*’ should be deleted from the definition of “criminal prosecution”.

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Reply to:



The above recommendations if adopted should serve protect the rights of all citizens in our great state. Thank you for allowing me to participate in this important process.

Sincerely,

Stacy A. Scott
Public Defender

