

HB

381

Representative Jay Ramras
Chair, Judiciary
Chair, Economic
Development, Trade &
Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
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Alaska State Legislature



House of Representatives

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House District 10

Fax

To: Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover: 1

From: Jane W. Pierson

Date: March 29, 2010

Re: Final HJUD CS for HB381

Today, the HJUD Committee heard and passed HB381 from committee with a title change amendment, the new title shall read:

“An Act relating to self defense in any place where the person has a right to be.”

Please draft a final CS

Any questions, give me a call.

Thank you

Representative_Jay_Ramras@legis.state.ak.us

26-LS1534E
Luckhaupt
3/23/10

CS FOR HOUSE BILL NO. 381()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES NEUMAN, Stoltze, Peggy Wilson, Keller, Ramras, Tammie Wilson, Olson, Kelly

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to self defense."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1.** AS 11.81.335(b) is amended to read:

4 (b) A person may not use deadly force under this section if the person knows
5 that, with complete personal safety and with complete safety as to others being
6 defended, the person can avoid the necessity of using deadly force by leaving the area
7 of the encounter, except there is no duty to leave the area if the person is

8 (1) on premises

9 (A) that the person owns or leases;

10 (B) where the person resides, temporarily or permanently; or

11 (C) as a guest or express or implied agent of the owner, lessor,
12 or resident;

13 (2) a peace officer acting within the scope and authority of the officer's
14 employment or a person assisting a peace officer under AS 11.81.380;

15 (3) in a building where the person works in the ordinary course of the

1
2
3

person's employment; [OR]

(4) protecting a child or a member of the person's household; or

(5) in any place where the person has a right to be.

ALASKA STATE LEGISLATURE

Co-Chair:
House Committee on Natural Resources

Vice Chair
House Committee on Labor and Commerce

Member:
House Committee on Rules, House Special
Committee on Economic Development, Trade,
and Tourism, and Legislative Budget & Audit
Committee



Session:
Alaska State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-2679
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Wasilla, AK 99654
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REPRESENTATIVE MARK NEUMAN

Rep.Mark.Neuman@legis.state.ak.us

March 11, 2010

Representative Jay Ramras, Chairman
House Judiciary Committee

Dear Representative Ramras,

Subject: HB 381: SELF DEFENSE

Attached is a committee package for House Bill 381, "SELF DEFENSE" I would appreciate it if you could schedule this legislation to be heard at your earliest convenience.

Included are the following:

- Current version of the bill.
- Sponsor statement.
- Sectional analysis.
- Background information and documentation.

Please feel free to contact me, or my aide Jim Ellis (465-3820), with any questions.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Neuman", written over a white background.

Representative Mark Neuman

ALASKA STATE LEGISLATURE

Co-Chair:

House Committee on Natural Resources

Vice Chair

House Committee on Labor and Commerce

Member:

House Committee on Rules, House Special
Committee on Economic Development, Trade,
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REPRESENTATIVE MARK NEUMAN

Rep.Mark.Neuman@legis.state.ak.us

Sponsor Statement

CS for HB 381 SELF DEFENSE

The CS for HB 381 recognizes that Alaskan residents have right to use deadly force to protect their families, persons and property whether they are at home, work, or in any place they have a right to be present. It does this by expanding your right to stand your ground to where they have a right to be.

By expanding the rights of Alaskans to stand their ground to any place they are legally present we tell our residents that their decision to use deadly force to defend themselves and their families will not be second judged, and makes it clear that it is *criminals* who have a duty to retreat.

I believe that HB 381 strengthens the legal recognition of the basic human right of self defense and ask for your support.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 26, 2010

SUBJECT: Sectional Summary - HB 381 (Work Order No. 26-LS1534R)

TO: Representative Mark Neuman
Attn: Jim Ellis

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill -- the bill itself is the best statement of its contents.

Section 1 of the bill amends AS 11.81.335(b) by adding to the places or locations where a person can use deadly force in self-defense without having to first leave the area.

Section 2 of the bill amends AS 11.81 by adding a new section that establishes that certain situations constitute prima facie evidence that a person's belief that the use of deadly force was reasonable; and requires law enforcement to make a probable cause determination that the force used by a person was unlawful before the person may be arrested.

GPL:plm
10-111.plm

AS 11.81.335 – 11.81.350

Sec. 11.81.335. Justification: Use of deadly force in defense of self.

(a) Except as provided in (b) of this section, a person who is justified in using nondeadly force in self-defense under AS 11.81.330 may use deadly force in self-defense upon another person when and to the extent the person reasonably believes the use of deadly force is necessary for self-defense against

(1) death;

(2) serious physical injury;

(3) kidnapping, except for what is described as custodial interference in the first degree in AS 11.41.320;

(4) sexual assault in the first degree;

(5) sexual assault in the second degree;

(6) sexual abuse of a minor in the first degree; or

(7) robbery in any degree.

(b) A person may not use deadly force under this section if the person knows that, with complete personal safety and with complete safety as to others being defended, the person can avoid the necessity of using deadly force by leaving the area of the encounter, except there is no duty to leave the area if the person is

(1) on premises

(A) that the person owns or leases;

(B) where the person resides, temporarily or permanently; or

(C) as a guest or express or implied agent of the owner, lessor, or resident;

(2) a peace officer acting within the scope and authority of the officer's employment or a person assisting a peace officer under AS 11.81.380;

(3) in a building where the person works in the ordinary course of the person's employment;
or

(4) protecting a child or a member of the person's household.

Sec. 11.81.340. Justification: Use of force in defense of a third person.

A person is justified in using force upon another when and to the extent the person reasonably believes it is necessary to defend a third person when, under the circumstances as the person claiming defense of another reasonably believes them to be, the third person would be justified under AS 11.81.330 or 11.81.335 in using that degree of force for self-defense.

Sec. 11.81.350. Justification: Use of force in defense of property and premises.

(a) A person may use nondeadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the commission or attempted commission by the other of an unlawful taking or damaging of property or services.

(b) A person may use deadly force upon another when and to the extent the person reasonably believes it necessary to terminate what the person reasonably believes to be the commission or attempted commission of arson upon a dwelling or occupied building.

(c) A person in possession or control of any premises, or a guest or an express or implied agent of that person, may use

(1) nondeadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the commission or attempted commission by the other of criminal trespass in any degree upon the premises;

(2) deadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be a burglary in any degree occurring in an occupied dwelling or building.

(d) *[Repealed, Sec. 7 ch 68 SLA 2006].*

(e) A person

(1) in a vehicle, or forcibly removed from a vehicle, may use deadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be a carjacking of that vehicle at or about the time the vehicle is carjacked;

(2) outside of a vehicle may use deadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the theft of that vehicle when another person, other than the perceived offender, is inside of the vehicle; this paragraph does not apply to a person outside of a vehicle who is involved in a dispute with a person inside of the vehicle who is a household member of that person; in this paragraph, "household member" has the meaning given in AS 18.66.990.

(f) A person justified in using force under this section does not have a duty to leave or attempt to leave the area of the encounter before using force.

(g) In (e) of this section,

(1) "carjacking" means a robbery involving the taking or attempted taking of a vehicle from a person in possession of the vehicle;

(2) "vehicle" means a "motor vehicle" as defined in AS 28.40.100, an aircraft, or a watercraft.

FISCAL NOTE

**STATE OF ALASKA
2010 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: HB 381
 () Publish Date: _____

Identifier (file name): HB381-LAW-CRIM-03-13-10 Dept. Affected: Law
 Title: An Act relating to self defense. RDU: CRIMINAL
 Component: Criminal Justice Litigation
 Sponsor: Representative(s) Neuman, Stoltze, Wilson, Keller, Ramras
 Requester: Judiciary Component Number: 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services	339.0		339.0	339.0	339.0	339.0	339.0	339.0
Travel	1.8		1.8	1.8	1.8	1.8	1.8	1.8
Contractual	49.5		49.5	49.5	49.5	49.5	49.5	49.5
Supplies	7.8		7.8	7.8	7.8	7.8	7.8	7.8
Equipment	1.9		1.9	1.9	1.9	1.9	1.9	1.9
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	400.0	0.0	400.0	400.0	400.0	400.0	400.0	400.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	400.0		400.0	400.0	400.0	400.0	400.0	400.0
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	400.0	0.0	400.0	400.0	400.0	400.0	400.0	400.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time	2		2	2	2	2	2
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

See attached page...

Prepared by: Eileen Donahue, Division Operations Manager
 Division: Administrative Services
 Approved by: Daniel S. Sullivan, Attorney General
Department of Law

Phone: 465-5427
 Date/Time: 3/13/10 1:00 PM
 Date: 3/13/2010

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. HB 381

ANALYSIS CONTINUATION

House Bill 381 expands the places from which a person need not retreat before using deadly force in self-defense to any place the person has a right to be. Thus, even though a person knows that with complete safety to oneself and others the person can leave the area of the encounter, the person is justified in using deadly force if the person is in a place the person has a right to be. There is no time limit when a person could use deadly force and be presumed to be acting in self defense.

HB 381 also adopts evidentiary presumptions that the use of deadly force is reasonable. The prosecution already is required to disprove self-defense beyond a reasonable doubt, and this will make that burden even higher.

This bill will make prosecution of homicide cases more difficult for the prosecution, and it will probably result in more jury trials. The Criminal Division anticipates it would need 2 new FTE attorney positions to handle the increased cases, to both screen referrals and prosecute those that are accepted.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: _____
 () Publish Date: _____

Identifier (file name): HB381-DPS-AST-03-12-10
 Title "An act relating to self defense."
 Dept. Affected: Public Safety
 RDU Alaska State Troopers
 Component AST Detachments
 Sponsor Representative Neuman
 Requester House Judiciary Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES ()								
-------------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 11.81.335 (justification for the use of deadly force) by adding areas (exceptions) a person is not required to leave prior to the application of deadly force. This bill also adds a new section that provides prima facie evidence for the justification for the use of deadly force. Finally, this bill prohibits a law enforcement agency from arresting a person for using force permitted under AS 11.81.355.

Passage of this legislation will have no fiscal impact on the department.

Prepared by: Lt. Rodney Dial
 Division: Alaska State Troopers
 Approved by: Joseph Masters, Commissioner
Department of Public Safety

Phone 907-247-4480
 Date/Time 3/12/10 10:30 AM
 Date 3/12/2010

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE

**SEAN PARNELL,
GOVERNOR**

Mailing: 310 K Street, Suite 308
Anchorage, Alaska 99501
Phone: (907) 269-6250
Fax: (907) 269-7939

March 15, 2010

Hon. Jay Ramras
Chair, House Judiciary Committee
Alaska State Capitol, Room 118
Juneau, Alaska 99801

Re: House Bill 381

Dear Chairman Ramras:

I am writing to express my serious concern over the current language in House Bill 381. Every experienced prosecutor with whom I have spoken about this bill uniformly agrees that it would promote violence and be a bad idea for our state. We believe that as drafted this bill will *encourage* unnecessary violence in our state. Whatever source one thinks our laws should be drawn from – the ten commandments which say “thou shall not kill,” simple morality, utilitarianism principles of the greater good, or simply the concept that life is sacred – this bill would encourage the needless taking of human life.

AS 11.81.335(b) as currently written sets forth the duty to retreat before resorting to deadly force. It requires that if “with complete personal safety and with complete safety to others being defended, the person can avoid the necessity of using deadly force by leaving the area” then the person must do so. This avoids the *unnecessary* loss of life and encourages our citizens to seek ways other than violence to resolve disputes. The addition of subsections 5 and 6 to this statute eradicates the duty to retreat - in fact should they be enacted, there would no longer be a duty to retreat in Alaska. That is to say if person A could avoid killing person B by walking away, he/she would no longer be required to do so, but instead would be authorized *by law* to kill person B. This does not promote the protection of our citizens or suggest that Alaska as a state places a high value on life itself. While this is highly unlikely to have been the goal of the bill’s sponsors, it is nevertheless the result of what has been proposed. This is best explained by closely examining the language of the proposed changes and additions.

Section 1 of the bill proposes amending AS 11.81.335(b) by adding a subsection (5) that would say there would be no duty to retreat when the person is “in a vehicle” owned, leased, used, or even just occupied with the owner’s consent. Here are but just three examples of how this would encourage violence:

First example:

A person picks up a hitchhiker, or offers a ride to someone, and, for whatever reason, a confrontation arises while in the vehicle such that deadly force could be used, but for the duty to retreat. Under the current law the hitchhiker must leave your vehicle if he knows he can do so safely. Under the proposed amendment, that hitchhiker would be authorized to kill the driver instead -- even if he could have simply walked away. These facts are similar of a recent murder trial in Anchorage, but they are close. The defendant was convicted of and sentenced for second-degree murder. The case is now on appeal. Why would we want to say killing another person is okay when it could be avoided? Why would we want to authorize the taking of a life when one could walk away in complete safety?

Second Example:

Joe Smith drives to a party. At the party he gets into an altercation and is thrown out of the party. He goes to his car and gets inside to leave. Before leaving, Mr. Smith sees the person with whom he got into the altercation. Though Mr. Smith is in his car, behind the wheel and ready to leave, he fears the other guy may come after him. Instead of driving off -- which he could do with complete personal safety, he gets out of his car and grabs a shotgun from the trunk and kills the other man. Again, these are facts similar to a recent murder trial in Anchorage. The defendant was convicted of and sentenced for manslaughter. The case is now on appeal. This is yet another situation in which our current law requires our citizens to walk away if they can do so with safety, but this proposed change in the law would authorize killing another human being instead.

Third Example:

An occupant in car A points a gun at the occupant in car B. If the occupant in car B can drive away with complete safety, then under the current law he must do so. Under the proposed change, the driver in car B would be authorized by this bill to open fire instead of driving away. The law of self-defense in Alaska requires the state to prove beyond a reasonable doubt a defendant's claim of self-defense is not true. It is difficult to prove a negative. If the state cannot prove the negative beyond a reasonable doubt, then at least the state can try to prove that the driver of car B had a duty to retreat and could have done so. This law would eliminate that duty. That is a recipe for inviting gang violence on our streets. These facts are in fact very similar to another case prosecuted by our department. In 2006 there was a shooting at Reka and Bragaw in Anchorage. Two vehicles with young men exchanging gunfire. One young man was killed and the two men in the other vehicle were convicted of murder. One of those cases is on appeal. This loss of life occurred for one of the participants. What about the innocent bystander? For example, there was the election day shooting in Anchorage when a campaign worker for former Gov. Murkowski was hit by a stray bullet at campaign HQ in Anchorage across from the Sears mall. That case involved two vehicles with young men -- not in gangs, but still rivals -- who opened fire on one another. While we did prosecute the shooters in that case, do so would have been impossible under this law.

This bill would unintentionally encourage such conduct by making it legal or at least offering a defense – which even if not true – could not be disproved. In each of the four examples the defendants were convicted, but this proposed change would make such prosecutions much harder, if even possible.

The proposed subsection (6) in AS 11.81.330(b) would almost completely eliminate the duty to retreat. That subsection says there is no such duty when a person is “in any place where the person has a right to be.” That means in the Diamond Mall, Sears Mall, McDonalds, or any other public location a person is no longer required to walk away from a confrontation, but instead may kill another citizen even if they could have walked away with complete safety. This does not express a value for human life. This does not encourage finding a resolution for disputes other than violence. The only time there would be a duty to retreat is if the person is some place they have no right to be – they must be trespassing, or committing a burglary in order to have such a duty. With this change you might as well simply eliminate the duty to retreat completely from our statutes.

The bill also proposes adding a new section that whittles away some of the other protections put in place to prevent unnecessary taking of human life. Our current self-defense law is set up with both a subjective and objective test to determine when deadly force is authorized. The subjective test means the person using the force believes he/she needs to do so. The objective test means the “reasonable person” would have concluded the same thing. The added section proposes to eliminate the objective test in several circumstances: burglary, carjacking, and kidnapping. That is it takes away from the jury the question of whether a reasonable person would view a particular event as unlawful force against a person that required a response of deadly force. At first blush this seems reasonable. However, when you examine what is proposed more closely, it becomes very disturbing. To understand why, you must first understand each of the three crimes it references.

Burglary is found in AS 11.46 and not AS 11.41 because it is a crime against property, not a person. Burglary requires a person to enter a building with the intent to commit a crime – theft, vandalism, and assault are all examples. What must be noted though is that no person needs to be in the building in order for this to be a crime. If a person breaks into a home or business to steal something, this is a burglary. If a student breaks into a school to vandalize it, this is a burglary. If a person breaks into a home to assault another person – even if no one is home, this is still a burglary because burglary only addresses the entry of premises with the intent to commit a crime (called a target crime) whether that (target) crime is committed or not. This is why burglary is classified as a crime against property and not against a person.

Under current law *non*-deadly force may be used to protect property, and deadly force is *only* authorized when terminating an arson or attempted arson on a dwelling or occupied building (*See* AS 11.81.350(b)), or when terminating a burglary upon an occupied building or dwelling if the person using the force is in possession or control of that premises, or is a guest. *See* AS 11.81.350(c)).

The current bill would now authorize deadly force against a person who burgles a dwelling whether anyone was home or not. Thus deadly force may be used even when no human life is at risk.

The proposed bill would also authorize *any* person to use deadly force as compared to only a person who is in possession or control of or is an invited guest in the dwelling. This means the guy driving down the street may kill a person he thinks is breaking into a home. The state must disprove defense of property, so the state must disprove that a victim was committing burglary. While this new section is fraught with the potential for misunderstandings to lead to the unnecessary loss of human life, there is another more serious problem with this section. This new section authorizes deadly force against a person who is currently committing or *had committed* a burglary. This language authorizes vigilantism. It authorizes deadly force against any person whom the person using the force "had reason to believe" *had* -- past tense -- had committed a burglary. This new section says such force *is* reasonable. The only question left is if the person using the force also thought it was "reasonable."

The section on carjacking does the same thing. It authorizes the use of deadly force against someone who *had* -- past tense -- taken a car by force. Even if no human life was at risk in the taking, this law would say it is okay to kill to keep your car from being taken from you or afterwards. That sounds like retaliation and vigilantism, not like a legislature enacting laws to protect our citizens and improve our lives.

The kidnapping subsection has the same issue with past tense. In each and every section this bill would legalize and authorize vigilantism.

Finally the bill also says no arrest may be made "unless the agency" determines that there is probable cause that the force that used was unlawful. This puts the police in a difficult position especially when confronting gang related violence. It is also unclear to whom "the agency" refers. This could potentially require magistrates and grand juries to start deciding if self-defense has been disproven. This in turn would require the state to act as defense counsel for the defendant to present such a defense only to have to then disprove it. This may sound confusing, and that is because this bill could cause serious problems in the criminal justice system with regard to self-defense law.

Thank you for your consideration of this letter.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: 

John Skidmore
Assistant Attorney General

Hon. Jay Ramras, Chair
Re: House Bill 381

March 15, 2010
Page 5

DSS:JS: sf

cc: House Judiciary Committee Members

Utah Code

Title 76 Utah Criminal Code

Chapter 2 Principles of Criminal Responsibility

Section 402 Force in defense of person -- Forcible felony defined.

76-2-402. Force in defense of person -- Forcible felony defined.

(1) A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that force is necessary to defend himself or a third person against such other's imminent use of unlawful force. However, that person is justified in using force intended or likely to cause death or serious bodily injury only if he or she reasonably believes that force is necessary to prevent death or serious bodily injury to himself or a third person as a result of the other's imminent use of unlawful force, or to prevent the commission of a forcible felony.

(2) A person is not justified in using force under the circumstances specified in Subsection (1) if he or she:

(a) initially provokes the use of force against himself with the intent to use force as an excuse to inflict bodily harm upon the assailant;

(b) is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or

(c) (i) was the aggressor or was engaged in a combat by agreement, unless he withdraws from the encounter and effectively communicates to the other person his intent to do so and, notwithstanding, the other person continues or threatens to continue the use of unlawful force; and

(ii) for purposes of Subsection (i) the following do not, by themselves, constitute "combat by agreement":

(A) voluntarily entering into or remaining in an ongoing relationship; or

(B) entering or remaining in a place where one has a legal right to be.

(3) A person does not have a duty to retreat from the force or threatened force described in Subsection (1) in a place where that person has lawfully entered or remained, except as provided in Subsection (2)(c).

(4) For purposes of this section, a forcible felony includes aggravated assault, mayhem, aggravated murder, murder, manslaughter, kidnapping, and aggravated kidnapping, rape, forcible sodomy, rape of a child, object rape, object rape of a child, sexual abuse of a child, aggravated sexual abuse of a child, and aggravated sexual assault as defined in Title 76, Chapter 5, and arson, robbery, and burglary as defined in Title 76, Chapter 6. Any other felony offense which involves the use of force or violence against a person so as to create a substantial danger of death or serious bodily injury also constitutes a forcible felony. Burglary of a vehicle, defined in Section 76-6-204, does not constitute a forcible felony except when the vehicle is occupied at the time unlawful entry is made or attempted.

(5) In determining imminence or reasonableness under Subsection (1), the trier of fact may consider, but is not limited to, any of the following factors:

(a) the nature of the danger;

(b) the immediacy of the danger;

(c) the probability that the unlawful force would result in death or serious bodily injury;

(d) the other's prior violent acts or violent propensities; and

(e) any patterns of abuse or violence in the parties' relationship.

2009 Florida Statutes

Title XLVI

CRIMES

Chapter 776

JUSTIFIABLE USE OF FORCE

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.

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 23, 2010

FURTHER REFERRALS: Finance

Date of Committee Action: 3/29/10

The JUDICIARY Committee considered:

HOUSE BILL NO. 381

"An Act relating to self defense."

HB 381-SELF DEFENSE

Recommends it be replaced with HCS or CS for HB381 (JUD)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

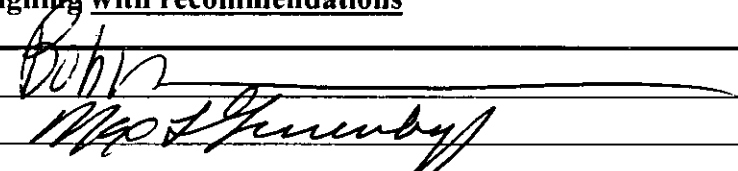
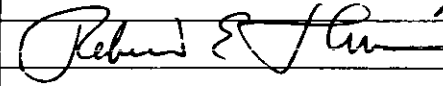
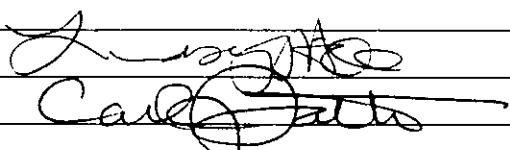
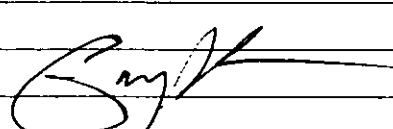
- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:

- ADM
- CED
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- DHS
- LWF
- LAW
- LEG
- MVA
- DNR
- DPS
- REV
- DOT
- UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DPS	1			✓
LAW	2	✓		

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Lynn Bradley	X			
	Herron			X	
	Holmes Gatto		X		
Chair: 	RAMRAS	X			
Chair:					