

Bill as Introduced

SB 88 – AS AMENDED BY THE SENATE

03/30/11 1310s

2011 SESSION

11-0341
04/09

SENATE BILL 88

AN ACT relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

SPONSORS: Sen. Boutin, Dist 16; Sen. Barnes, Jr., Dist 17; Sen. Bradley, Dist 3; Sen. Carson, Dist 14; Sen. Bragdon, Dist 11; Sen. De Blois, Dist 18; Sen. Forsythe, Dist 4; Sen. Gallus, Dist 1; Sen. Groen, Dist 6; Sen. Lambert, Dist 13; Sen. Luther, Dist 12; Sen. White, Dist 9; Rep. Baldasaro, Rock 3; Rep. Jennifer Coffey, Merr 6; Rep. Swinford, Belk 5

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill:

- I. Removes a person's duty to retreat from an encounter involving deadly force.
- II. Provides that a person is not justified in using deadly force on another to defend himself, herself, or a third person from the use of deadly force that he or she provoked.
- III. Provides that, except as otherwise prohibited by statute, a person who is anywhere he or she has a right to be and who displays or brandishes a firearm or other means of self-defense to warn off a threat shall not be guilty of criminal threatening.

Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 88 - AS AMENDED BY THE SENATE

03/30/11 1310s

11-0341
04/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Physical Force in Defense of Person. Amend RSA 627:4, III to read as follows:

2 III. A person is not justified in using deadly force on another to defend himself or *herself* or
3 a third person from deadly force by the other if he *or she* knows that he *or she* and the third person
4 can, with complete safety:

5 (a) ~~[Retreat from the encounter, except that he is not required to retreat if he is within~~
6 ~~his dwelling or its curtilage and was not the initial aggressor; or~~

7 ~~(b)}~~ Surrender property to a person asserting a claim of right thereto; or

8 ~~[(e)]~~ (b) Comply with a demand that he *or she* abstain from performing an act which he
9 *or she* is not obliged to perform; nor is the use of deadly force justifiable when, with the purpose of
10 causing death or serious bodily harm, the actor has provoked the use of force against himself *or*
11 *herself* in the same encounter[-]; or

12 ~~[(d)]~~ (c) If he *or she* is a law enforcement officer or a private person assisting ~~[him]~~ *the*
13 *officer* at ~~[his]~~ *the officer's* direction and was acting pursuant to RSA 627:5, ~~[he]~~ *the person* need
14 not retreat.

15 2 Effective Date. This act shall take effect 60 days after its passage.

16 3 Criminal Threatening. Amend RSA 631:4, IV to read as follows:

17 IV. *Except as otherwise prohibited by statute*, a person *who is anywhere he or she*
18 *has a right to be and* who responds to a threat which would be considered by a reasonable person
19 as likely to cause serious bodily injury or death to the person or to another by displaying *or*
20 *brandishing* a firearm or other means of self-defense with the intent to warn away the person
21 making the threat shall not have committed a criminal act under this section.

Amendments

Amendment to SB 88

Not Adopted

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to physical force in defense of a person, relative to the brandishing of a
4 firearm or other means of self-defense, relative to the definition of "non-deadly"
5 force, and relative to the general rule on civil immunity.
6

7 Amend the bill by replacing all after the enacting clause with the following:

8

9 1 Physical Force in Defense of a Person. Amend RSA 627:4, III to read as follows:

10 III. A person is not justified in using deadly force on another to defend himself, *herself*, or a
11 third person from deadly force by the other if he *or she* knows that he *or she* and the third person
12 can, with complete safety:

13 (a) Retreat from the encounter, except that he *or she* is not required to retreat if he *or*
14 *she* is within his *or her* dwelling [~~or~~], its curtilage, *or anywhere he or she has a right to be*, and
15 was not the initial aggressor; or

16 (b) Surrender property to a person asserting a claim of right thereto; or

17 (c) Comply with a demand that he *or she* abstain from performing an act which he *or*
18 *she* is not obliged to perform; nor is the use of deadly force justifiable when, with the purpose of
19 causing death or serious bodily harm, the [~~actor~~] *person* has provoked the use of force against
20 himself *or herself* in the same encounter.

21 (d) If he *or she* is a law enforcement officer or a private person assisting [~~him~~] *a law*
22 *enforcement officer* at [~~his~~] *the law enforcement officer's* direction and was acting pursuant to
23 RSA 627:5, he *or she* need not retreat.

24 2 Criminal Threatening. Amend RSA 631:4, IV to read as follows:

25 IV. *Except as otherwise prohibited by statute*, a person *who is anywhere he or she*
26 *has a right to be and* who responds to a threat which would be considered by a reasonable person
27 as likely to cause serious bodily injury or death to the person or to another by displaying *or*
28 *brandishing* a firearm or other means of self-defense with the intent to warn away the person
29 making the threat shall not have committed a criminal act under this section.

30 3 Sentences and Limitations. Amend RSA 651:2, II-g to read as follows:

31 II-g. If a person is convicted of a felony, an element of which is the possession, use or
32 attempted use of a deadly weapon, and the deadly weapon is a firearm, such person may be
33 sentenced to a maximum term of 20 years' imprisonment in lieu of any other sentence prescribed for

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1 the crime. [~~The person shall be given a minimum mandatory sentence of not less than 3 years'~~
2 ~~imprisonment for a first offense and a minimum mandatory sentence of not less than 6 years'~~
3 ~~imprisonment if such person has been previously convicted of any state or federal offense for which~~
4 ~~the maximum penalty provided was imprisonment in excess of one year, and an element of which~~
5 ~~was the possession, use or attempted use of a firearm. Neither the whole nor any part of the~~
6 ~~minimum sentence imposed under this paragraph shall be suspended or reduced.]~~

7 4 Justification; Definitions. Amend RSA 627:9, IV to read as follows:

8 IV. "Non-deadly force" means any assault or confinement which does not constitute deadly
9 force. ***The act of producing or displaying a weapon shall constitute non-deadly force.***

10 5 Justification; Civil Immunity. RSA 627:1 is repealed and reenacted to read as follows:

11 627:1 Civil Immunity; General Rule. A person who uses force in self-protection or in the
12 protection of other persons pursuant to RSA 627:4, in the protection of premises and property
13 pursuant to RSA 627:7 and 627:8, in law enforcement pursuant to RSA 627:5, or in the care or
14 welfare of a minor pursuant to RSA 627:6, is justified in using such force and shall be immune from
15 civil liability for personal injuries sustained by a perpetrator which were caused by the acts or
16 omissions of the person as a result of the use of force. In a civil action initiated by or on behalf of a
17 perpetrator against the person, the court shall award the person reasonable attorney's fees, and
18 costs, including but not limited to, expert witness fees, court costs, and compensation for loss of
19 income.

20 6 Effective Date. This act shall take effect 60 days after its passage.



2011-1824h

AMENDED ANALYSIS

This bill:

I. Allows a person who is anywhere he or she has a right to be to use deadly force to protect oneself or a third person.

II. Amends the criminal threatening statute to provide that a person who is anywhere he or she has a right to be and who displays or brandishes a firearm or other means of self-defense to warn off a threat shall not be guilty of criminal threatening.

III. Deletes the minimum mandatory sentencing requirement for felony convictions which include the possession, use, or attempted use of a firearm.

IV. Amends the definition of "non-deadly force" to include the act of producing or displaying a weapon.

V. Amends the definition of civil immunity for the use of force against a perpetrator in certain circumstances.

Rep. Swinford, Belk. 5
Rep. Kreis, Merr. 6
Rep. Hoell, Merr. 13
May 17, 2011
2011-1969h
04/01

Amendment to SB 88

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to physical force in defense of a person, brandishing a firearm or other
4 means of self-defense, and carrying firearms.
5

6 Amend the bill by replacing all after the enacting clause with the following:

7

8 1 Physical Force in Defense of Person. Amend RSA 627:4, III to read as follows:

9 III. A person is not justified in using deadly force on another to defend himself or *herself* or
10 a third person from deadly force by the other if he *or she* knows that he *or she* and the third person
11 can, with complete safety:

12 (a) Retreat from the encounter, except that he *or she* is not required to retreat if he *or*
13 *she* is within his *or her* dwelling [or], its curtilage, *or anywhere he or she has a right to be*, and
14 was not the initial aggressor; or

15 (b) Surrender property to a person asserting a claim of right thereto; or

16 (c) Comply with a demand that he *or she* abstain from performing an act which he *or*
17 *she* is not obliged to perform; nor is the use of deadly force justifiable when, with the purpose of
18 causing death or serious bodily harm, the ~~[aetæ]~~ *person* has provoked the use of force against
19 himself *or herself* in the same encounter[-]; or

20 ~~[(d)]~~ (c) If he *or she* is a law enforcement officer or a private person assisting ~~[him]~~ *the*
21 *officer* at ~~[his]~~ *the officer's* direction and was acting pursuant to RSA 627:5, ~~[he]~~ *the person* need
22 not retreat.

23 2 Criminal Threatening. Amend RSA 631:4, IV to read as follows:

24 IV. *Except as otherwise prohibited by statute*, a person *who is anywhere he or she*
25 *has a right to be and* who responds to a threat which would be considered by a reasonable person
26 as likely to cause serious bodily injury or death to the person or to another by displaying *or*
27 *brandishing* a firearm or other means of self-defense with the intent to warn away the person
28 making the threat shall not have committed a criminal act under this section.

29 3 Statement of Intent.

30 I. The general court finds that on June 21, 1788, in convention, the people of the state of
31 New Hampshire did impartially discuss and fully considered the Constitution for the United States

Amendment to SB 88

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1 of America.

2 II. The general court acknowledges the specific conditional terms of ratification in article
3 first wherein it "explicitly declares that all powers not expressly and particularly delegated by the
4 aforesaid constitution are reserved to the several states to be, by them exercised."

5 III. Article twelfth clearly states, "Congress shall never disarm any citizen unless such as
6 are or have been in actual rebellion."

7 IV. Art. 2-a. of the New Hampshire State Constitution clearly states, "All persons have the
8 right to keep and bear arms in defense of themselves, their families, their property and the state."

9 V. The Second Amendment of the United States Constitution clearly enumerates "the right
10 of the people to keep and bear arms shall not be infringed;" and

11 VI. The United States Supreme Court has recently upheld the Second Amendment of the
12 United States as an individual right premised upon self defense and hunting and made such rights
13 enforceable to the States through the Fourteenth Amendment.

14 4 Pistols and Revolvers; Carrying Without License. RSA 159:4 is repealed and reenacted to read
15 as follows:

16 159:4 Carrying Without License.

17 I. Notwithstanding any provision of law to the contrary, no person shall be guilty of an
18 offense for carrying a firearm, openly or concealed, loaded or unloaded, upon or about his or her
19 person, or upon or in a vehicle, whether or not such person possesses a license, permit, or other
20 authorization to carry a firearm.

21 II. The provisions of paragraph I shall not constitute a bar to prosecution for any of the
22 following offenses:

23 (a) RSA 159:3, relative to convicted felons.

24 (b) RSA 159:3-a, relative to armed career criminals.

25 (c) RSA 159:19, relative to courthouse security.

26 (d) RSA 207:7, relative to hunting from a motor vehicle, OHRV, snowmobile, boat, or
27 aircraft.

28 (e) RSA 215-A:20, relative to loaded firearms on an OHRV.

29 (f) RSA 215-C:35, relative to loaded firearms on a snowmobile.

30 (g) RSA 637:7, relative to receiving stolen property.

31 (h) RSA 637:7-a, relative to possession of property without a serial number.

32 (i) RSA 597:7-a, relative to default or breach of conditions of release.

33 5 Pistols and Revolvers; Exceptions. Amend RSA 159:5 to read as follows:

34 159:5 Exceptions. [~~The provisions of~~] RSA 159:3 [~~and 4~~] shall not apply to marshals, sheriffs,
35 policemen or other duly appointed peace and other law enforcement officers, or bailiffs and court
36 officers responsible for court security; nor to the regular and ordinary transportation of pistols or
37 revolvers as merchandise, nor to members of the armed services of the United States when on duty;

Amendment to SB 88

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1 nor to the national guard when on duty; nor to organizations by law authorized to purchase or
2 receive such weapons; nor to duly authorized military or civil organizations when parading, or the
3 members thereof when at, or going to or from, their customary places of assembly.

4 6 Pistols and Revolvers; Optional License to Carry. Amend RSA 159:6, I to read as follows:

5 I. The selectmen of a town or the mayor or chief of police of a city or some full-time police
6 officer designated by them respectively, upon application of any resident of such town or city, or the
7 director of state police, or some person designated by such director, upon application of a
8 nonresident, shall issue a license to such applicant authorizing the applicant to carry a loaded pistol
9 or revolver in this state for not less than [4] 5 years from the date of issue, if it appears that the
10 applicant has good reason to fear injury to the applicant's person or property or has any proper
11 purpose, and that the applicant is a suitable person to be licensed. Hunting, target shooting, or self-
12 defense shall be considered a proper purpose. The license shall be valid for all allowable purposes
13 regardless of the purpose for which it was originally issued. The license shall be in duplicate and
14 shall bear the name, address, description, and signature of the licensee. The original shall be
15 delivered to the licensee and the duplicate shall be preserved by the people issuing the same for [4] 5
16 years. When required, license renewal shall take place within the month of the [fourth] *fifth*
17 anniversary of the license holder's date of birth following the date of issuance. The license shall be
18 issued within 14 days after application, and, if such application is denied, the reason for such denial
19 shall be stated in writing, the original of which such writing shall be delivered to the applicant, and
20 a copy kept in the office of the person to whom the application was made. The fee for licenses issued
21 to residents of the state shall be \$10, which fee shall be for the use of the law enforcement
22 department of the town or city granting said licenses; the fee for licenses granted to out-of-state
23 residents shall be [~~\$100~~] \$50, which fee shall be for the use of the state. The director of state police
24 is hereby authorized and directed to prepare forms for the licenses required under this chapter and
25 forms for the application for such licenses and to supply the same to officials of the cities and towns
26 authorized to issue the licenses. *The form shall require no more information than was*
27 *required on the state of New Hampshire application for pistol/revolver license, form DSSP*
28 *85, as revised in December 2009.* No other forms shall be used by officials of cities and towns.
29 The cost of the forms shall be paid out of the fees received from nonresident licenses.

30 7 Pistols and Revolvers; Reciprocity. Amend RSA 159:6-d to read as follows:

31 159:6-d Full Faith and Credit for Licenses From Other States; Reciprocity. [~~Notwithstanding~~
32 ~~the provisions of RSA 159:6,~~] No nonresident [~~holding a current and valid license to carry a loaded~~
33 ~~pistol or revolver in the state in which he resides~~] or [~~who is a~~] peace officer [~~in the state in which he~~
34 ~~resides,~~] shall be required to obtain a license to carry a loaded pistol or revolver within this state if:

35 I. Such nonresident carries upon his person the license held from the state in which he
36 resides; [~~and~~] or

37 II. *Such nonresident is in compliance with RSA 159:4; or*

Amendment to SB 88

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1 [~~H.~~] *III.* The state in which such person is a resident provides a reciprocal privilege for
2 residents of this state.

3 8 Pistols and Revolvers; Exemption. Amend RSA 159:14 to read as follows:

4 159:14 Exemption. None of the provisions of this chapter shall prohibit an individual not
5 licensed under the provisions thereof who is not engaged in the business of selling pistols or
6 revolvers from selling a pistol or revolver to a person *qualified pursuant to RSA 159:4, or who is*
7 licensed under this chapter, or to a person personally known to him *or her*.

8 9 Game Animals; Bow and Arrow. Amend RSA 208:5, V to read as follows:

9 V. The licensee shall not be entitled to carry any firearms while hunting under the
10 provisions of this section, unless such licensee also possesses a valid firearms hunting license [~~or a~~
11 ~~valid license to carry firearms issued pursuant to RSA 159]~~ *or is otherwise qualified pursuant to*
12 *RSA 159:4.*

13 10 New Section; Justification; Civil Immunity. Amend RSA 627 by inserting after section 1 the
14 following new section:

15 627:1-a Civil Immunity. A person who uses force in self-protection or in the protection of other
16 persons pursuant to RSA 627:4, in the protection of premises and property pursuant to RSA 627:7
17 and 627:8, in law enforcement pursuant to RSA 627:5, or in the care or welfare of a minor pursuant
18 to RSA 627:6, is justified in using such force and shall be immune from civil liability for personal
19 injuries sustained by a perpetrator which were caused by the acts or omissions of the person as a
20 result of the use of force. In a civil action initiated by or on behalf of a perpetrator against the
21 person, the court shall award the person reasonable attorney's fees, and costs, including but not
22 limited to, expert witness fees, court costs, and compensation for loss of income.

23 11 Repeal. RSA 21-P:14, II(f), relative to the authority of the commissioner of the department of
24 safety to adopt rules relative to the issuance of nonresident pistol permits, is repealed.

25 12 Effective Date.

26 I. Sections 1-2 of this act shall take effect 60 days after its passage.

27 II. The remainder of this act shall take effect upon its passage.

2011-1969h

AMENDED ANALYSIS

This bill:

I. Allows a person who is anywhere he or she has a right to be to use deadly force to protect oneself or a third person.

II. Provides that, except as otherwise prohibited by statute, a person who is anywhere he or she has a right to be and who displays or brandishes a firearm or other means of self-defense to warn off a threat shall not be guilty of criminal threatening.

III. Permits any person who meets the requirements established in RSA 159:4 to carry a firearm openly or concealed, loaded or unloaded, on or about his or her person or upon or in a vehicle.

IV. Removes, under certain circumstances, the requirement that nonresidents obtain a license to possess a firearm while in New Hampshire.

V. Inserts a civil immunity provision for the use of force against a perpetrator in certain circumstances.

Rep. Swinford, Belk. 5
Rep. Kreis, Merr. 6
Rep. Hoell, Merr. 13
May 17, 2011
2011-1969h
04/01

Amendment to SB 88

not adopted

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to physical force in defense of a person, brandishing a firearm or other
4 means of self-defense, and carrying firearms.
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6 Amend the bill by replacing all after the enacting clause with the following:

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10 a third person from deadly force by the other if he *or she* knows that he *or she* and the third person
11 can, with complete safety:

12 (a) Retreat from the encounter, except that he *or she* is not required to retreat if he *or*
13 *she* is within his *or her* dwelling [or], its curtilage, *or anywhere he or she has a right to be*, and
14 was not the initial aggressor; or

15 (b) Surrender property to a person asserting a claim of right thereto; or

16 (c) Comply with a demand that he *or she* abstain from performing an act which he *or*
17 *she* is not obliged to perform; nor is the use of deadly force justifiable when, with the purpose of
18 causing death or serious bodily harm, the ~~[actor]~~ *person* has provoked the use of force against
19 himself *or herself* in the same encounter[-]; or

20 ~~[(d)]~~ (c) If he *or she* is a law enforcement officer or a private person assisting ~~[him]~~ *the*
21 *officer* at ~~[his]~~ *the officer's* direction and was acting pursuant to RSA 627:5, ~~[he]~~ *the person* need
22 not retreat.

23 2 Criminal Threatening. Amend RSA 631:4, IV to read as follows:

24 IV. *Except as otherwise prohibited by statute*, a person *who is anywhere he or she*
25 *has a right to be and* who responds to a threat which would be considered by a reasonable person
26 as likely to cause serious bodily injury or death to the person or to another by displaying *or*
27 *brandishing* a firearm or other means of self-defense with the intent to warn away the person
28 making the threat shall not have committed a criminal act under this section.

29 3 Statement of Intent.

30 1. The general court finds that on June 21, 1788, in convention, the people of the state of
31 New Hampshire did impartially discuss and fully considered the Constitution for the United States



1 of America.

2 II. The general court acknowledges the specific conditional terms of ratification in article
3 first wherein it "explicitly declares that all powers not expressly and particularly delegated by the
4 aforesaid constitution are reserved to the several states to be, by them exercised."

5 III. Article twelfth clearly states, "Congress shall never disarm any citizen unless such as
6 are or have been in actual rebellion."

7 IV. Art. 2-a. of the New Hampshire State Constitution clearly states, "All persons have the
8 right to keep and bear arms in defense of themselves, their families, their property and the state."

9 V. The Second Amendment of the United States Constitution clearly enumerates "the right
10 of the people to keep and bear arms shall not be infringed;" and

11 VI. The United States Supreme Court has recently upheld the Second Amendment of the
12 United States as an individual right premised upon self defense and hunting and made such rights
13 enforceable to the States through the Fourteenth Amendment.

14 4 Pistols and Revolvers; Carrying Without License. RSA 159:4 is repealed and reenacted to read
15 as follows:

16 159:4 Carrying Without License.

17 I. Notwithstanding any provision of law to the contrary, no person shall be guilty of an
18 offense for carrying a firearm, openly or concealed, loaded or unloaded, upon or about his or her
19 person, or upon or in a vehicle, whether or not such person possesses a license, permit, or other
20 authorization to carry a firearm.

21 II. The provisions of paragraph I shall not constitute a bar to prosecution for any of the
22 following offenses:

23 (a) RSA 159:3, relative to convicted felons.

24 (b) RSA 159:3-a, relative to armed career criminals.

25 (c) RSA 159:19, relative to courthouse security.

26 (d) RSA 207:7, relative to hunting from a motor vehicle, OHRV, snowmobile, boat, or
27 aircraft.

28 (e) RSA 215-A:20, relative to loaded firearms on an OHRV.

29 (f) RSA 215-C:35, relative to loaded firearms on a snowmobile.

30 (g) RSA 637:7, relative to receiving stolen property.

31 (h) RSA 637:7-a, relative to possession of property without a serial number;

32 (i) RSA 597:7-a, relative to default or breach of conditions of release.

33 5 Pistols and Revolvers; Exceptions. Amend RSA 159:5 to read as follows:

34 159:5 Exceptions. ~~[The provisions of]~~ RSA 159:3 ~~[and 4]~~ shall not apply to marshals, sheriffs,
35 policemen or other duly appointed peace and other law enforcement officers, or bailiffs and court
36 officers responsible for court security; nor to the regular and ordinary transportation of pistols or
37 revolvers as merchandise, nor to members of the armed services of the United States when on duty;

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1 nor to the national guard when on duty; nor to organizations by law authorized to purchase or
2 receive such weapons; nor to duly authorized military or civil organizations when parading, or the
3 members thereof when at, or going to or from, their customary places of assembly.

4 6 Pistols and Revolvers; Optional License to Carry. Amend RSA 159:6, I to read as follows:

5 I. The selectmen of a town or the mayor or chief of police of a city or some full-time police
6 officer designated by them respectively, upon application of any resident of such town or city, or the
7 director of state police, or some person designated by such director, upon application of a
8 nonresident, shall issue a license to such applicant authorizing the applicant to carry a loaded pistol
9 or revolver in this state for not less than [4] 5 years from the date of issue, if it appears that the
10 applicant has good reason to fear injury to the applicant's person or property or has any proper
11 purpose, and that the applicant is a suitable person to be licensed. Hunting, target shooting, or self-
12 defense shall be considered a proper purpose. The license shall be valid for all allowable purposes
13 regardless of the purpose for which it was originally issued. The license shall be in duplicate and
14 shall bear the name, address, description, and signature of the licensee. The original shall be
15 delivered to the licensee and the duplicate shall be preserved by the people issuing the same for [4] 5
16 years. When required, license renewal shall take place within the month of the [fourth] fifth
17 anniversary of the license holder's date of birth following the date of issuance. The license shall be
18 issued within 14 days after application, and, if such application is denied, the reason for such denial
19 shall be stated in writing, the original of which such writing shall be delivered to the applicant, and
20 a copy kept in the office of the person to whom the application was made. The fee for licenses issued
21 to residents of the state shall be \$10, which fee shall be for the use of the law enforcement
22 department of the town or city granting said licenses; the fee for licenses granted to out-of-state
23 residents shall be [~~\$100~~] \$50, which fee shall be for the use of the state. The director of state police
24 is hereby authorized and directed to prepare forms for the licenses required under this chapter and
25 forms for the application for such licenses and to supply the same to officials of the cities and towns
26 authorized to issue the licenses. *The form shall require no more information than was*
27 *required on the state of New Hampshire application for pistol/revolver license, form DSSP*
28 *85, as revised in December 2009.* No other forms shall be used by officials of cities and towns.
29 The cost of the forms shall be paid out of the fees received from nonresident licenses.

30 7 Pistols and Revolvers; Reciprocity. Amend RSA 159:6-d to read as follows:

31 159:6-d Full Faith and Credit for Licenses From Other States; Reciprocity. [~~Notwithstanding~~
32 ~~the provisions of RSA 159:6,~~] No nonresident [~~holding a current and valid license to carry a loaded~~
33 ~~pistol or revolver in the state in which he resides]~~ or [~~who is a~~] peace officer [~~in the state in which he~~
34 ~~resides,~~] shall be required to obtain a license to carry a loaded pistol or revolver within this state if:

35 I. Such nonresident carries upon his person the license held from the state in which he
36 resides; [~~and~~] or

37 II. Such nonresident is in compliance with RSA 159:4; or

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1 ~~II.~~ **III.** The state in which such person is a resident provides a reciprocal privilege for
2 residents of this state.

3 8 Pistols and Revolvers; Exemption. Amend RSA 159:14 to read as follows:

4 159:14 Exemption. None of the provisions of this chapter shall prohibit an individual not
5 licensed under the provisions thereof who is not engaged in the business of selling pistols or
6 revolvers from selling a pistol or revolver to a person *qualified pursuant to RSA 159:4, or who is*
7 licensed under this chapter, or to a person personally known to him *or her*.

8 9 Game Animals; Bow and Arrow. Amend RSA 208:5, V to read as follows:

9 V. The licensee shall not be entitled to carry any firearms while hunting under the
10 provisions of this section, unless such licensee also possesses a valid firearms hunting license ~~[or a~~
11 ~~valid license to carry firearms issued pursuant to RSA 159]~~ *or is otherwise qualified pursuant to*
12 *RSA 159:4.*

13 10 New Section; Justification; Civil Immunity. Amend RSA 627 by inserting after section 1 the
14 following new section:

15 627:1-a Civil Immunity. A person who uses force in self-protection or in the protection of other
16 persons pursuant to RSA 627:4, in the protection of premises and property pursuant to RSA 627:7
17 and 627:8, in law enforcement pursuant to RSA 627:5, or in the care or welfare of a minor pursuant
18 to RSA 627:6, is justified in using such force and shall be immune from civil liability for personal
19 injuries sustained by a perpetrator which were caused by the acts or omissions of the person as a
20 result of the use of force. In a civil action initiated by or on behalf of a perpetrator against the
21 person, the court shall award the person reasonable attorney's fees, and costs, including but not
22 limited to, expert witness fees, court costs, and compensation for loss of income.

23 11 Repeal. RSA 21-P:14, II(f), relative to the authority of the commissioner of the department of
24 safety to adopt rules relative to the issuance of nonresident pistol permits, is repealed.

25 12 Effective Date.

26 I. Sections 1-2 of this act shall take effect 60 days after its passage.

27 II. The remainder of this act shall take effect upon its passage.



2011-1969h

AMENDED ANALYSIS

This bill:

I. Allows a person who is anywhere he or she has a right to be to use deadly force to protect oneself or a third person.

II. Provides that, except as otherwise prohibited by statute, a person who is anywhere he or she has a right to be and who displays or brandishes a firearm or other means of self-defense to warn off a threat shall not be guilty of criminal threatening.

III. Permits any person who meets the requirements established in RSA 159:4 to carry a firearm openly or concealed, loaded or unloaded, on or about his or her person or upon or in a vehicle.

IV. Removes, under certain circumstances, the requirement that nonresidents obtain a license to possess a firearm while in New Hampshire.

V. Inserts a civil immunity provision for the use of force against a perpetrator in certain circumstances.

Rep. Swinford, Belk. 5
Rep. Kreis, Merr. 6
Rep. Welch, Rock. 8
May 19, 2011
2011-2031h
04/01

Amendment to SB 88

NOT ADOPTED

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to physical force in defense of a person, brandishing a firearm or other
4 means of self-defense, and carrying firearms.
5

6 Amend the bill by replacing all after the enacting clause with the following:

7

8 1 Physical Force in Defense of Person. Amend RSA 627:4, III to read as follows:

9 III. A person is not justified in using deadly force on another to defend himself or *herself* or
10 a third person from deadly force by the other if he *or she* knows that he *or she* and the third person
11 can, with complete safety:

12 (a) Retreat from the encounter, except that he *or she* is not required to retreat if he *or*
13 *she* is within his *or her* dwelling [or], its curtilage, *or anywhere he or she has a right to be*, and
14 was not the initial aggressor; or

15 (b) Surrender property to a person asserting a claim of right thereto; or

16 (c) Comply with a demand that he *or she* abstain from performing an act which he *or*
17 *she* is not obliged to perform; nor is the use of deadly force justifiable when, with the purpose of
18 causing death or serious bodily harm, the ~~actor~~ *person* has provoked the use of force against
19 himself *or herself* in the same encounter[-]; *or*

20 (d) If he *or she* is a law enforcement officer or a private person assisting ~~him~~ *the*
21 *officer* at ~~his~~ *the officer's* direction and was acting pursuant to RSA 627:5, ~~he~~ *the person* need
22 not retreat.

23 2 Criminal Threatening. Amend RSA 631:4, IV to read as follows:

24 IV. *Except as otherwise prohibited by statute*, a person *who is anywhere he or she*
25 *has a right to be and* who responds to a threat which would be considered by a reasonable person
26 as likely to cause serious bodily injury or death to the person or to another by displaying *or*
27 *brandishing* a firearm or other means of self-defense with the intent to warn away the person
28 making the threat shall not have committed a criminal act under this section.

29 3 Sentences and Limitations. Amend RSA 651:2, II-g to read as follows:

30 II-g. If a person is convicted of a felony, an element of which is the possession, use or
31 attempted use of a deadly weapon, and the deadly weapon is a firearm, such person may be

Amendment to SB 88

- Page 2 -

1 sentenced to a maximum term of 20 years' imprisonment in lieu of any other sentence prescribed for
2 the crime. [~~The person shall be given a minimum mandatory sentence of not less than 3 years'~~
3 ~~imprisonment for a first offense and a minimum mandatory sentence of not less than 6 years'~~
4 ~~imprisonment if such person has been previously convicted of any state or federal offense for which~~
5 ~~the maximum penalty provided was imprisonment in excess of one year, and an element of which~~
6 ~~was the possession, use or attempted use of a firearm. Neither the whole nor any part of the~~
7 ~~minimum sentence imposed under this paragraph shall be suspended or reduced.]~~

8 4 Statement of Intent.

9 I. The general court finds that on June 21, 1788, in convention, the people of the state of
10 New Hampshire did impartially discuss and fully considered the Constitution for the United States
11 of America.

12 II. The general court acknowledges the specific conditional terms of ratification in article
13 first wherein it "explicitly declares that all powers not expressly and particularly delegated by the
14 aforesaid constitution are reserved to the several states to be, by them exercised."

15 III. Article twelfth clearly states, "Congress shall never disarm any citizen unless such as
16 are or have been in actual rebellion."

17 IV. Art. 2-a. of the New Hampshire State Constitution clearly states, "All persons have the
18 right to keep and bear arms in defense of themselves, their families, their property and the state."

19 V. The Second Amendment of the United States Constitution clearly enumerates "the right
20 of the people to keep and bear arms shall not be infringed;" and

21 VI. The United States Supreme Court has recently upheld the Second Amendment of the
22 United States as an individual right premised upon self defense and hunting and made such rights
23 enforceable to the States through the Fourteenth Amendment.

24 5 Pistols and Revolvers; Carrying Without License. RSA 159:4 is repealed and reenacted to read
25 as follows:

26 159:4 Carrying Without License.

27 I. Notwithstanding any provision of law to the contrary, no person shall be guilty of an
28 offense for carrying a firearm, openly or concealed, loaded or unloaded, upon or about his or her
29 person, or upon or in a vehicle, whether or not such person possesses a license, permit, or other
30 authorization to carry a firearm.

31 II. The provisions of paragraph I shall not constitute a bar to prosecution for any of the
32 following offenses:

33 (a) RSA 159:3, relative to convicted felons.

34 (b) RSA 159:3-a, relative to armed career criminals.

35 (c) RSA 159:19, relative to courthouse security.

36 (d) RSA 207:7, relative to hunting from a motor vehicle, OHRV, snowmobile, boat, or
37 aircraft.

Amendment to SB 88

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- 1 (e) RSA 215-A:20, relative to loaded firearms on an OHRV.
- 2 (f) RSA 215-C:35, relative to loaded firearms on a snowmobile.
- 3 (g) RSA 637:7, relative to receiving stolen property.
- 4 (h) RSA 637:7-a, relative to possession of property without a serial number.
- 5 (i) RSA 597:7-a, relative to default or breach of conditions of release.

6 6 Pistols and Revolvers; Exceptions. Amend RSA 159:5 to read as follows:

7 159:5 Exceptions. [~~The provisions of~~] RSA 159:3 [~~and 4~~] shall not apply to marshals, sheriffs,
8 policemen or other duly appointed peace and other law enforcement officers, or bailiffs and court
9 officers responsible for court security; nor to the regular and ordinary transportation of pistols or
10 revolvers as merchandise, nor to members of the armed services of the United States when on duty;
11 nor to the national guard when on duty; nor to organizations by law authorized to purchase or
12 receive such weapons; nor to duly authorized military or civil organizations when parading, or the
13 members thereof when at, or going to or from, their customary places of assembly.

14 7 Pistols and Revolvers; Optional License to Carry. Amend RSA 159:6, I to read as follows:

15 I. The selectmen of a town or the mayor or chief of police of a city or some full-time police
16 officer designated by them respectively, upon application of any resident of such town or city, or the
17 director of state police, or some person designated by such director, upon application of a
18 nonresident, shall issue a license to such applicant authorizing the applicant to carry a loaded pistol
19 or revolver in this state for not less than [4] 5 years from the date of issue, if it appears that the
20 applicant has good reason to fear injury to the applicant's person or property or has any proper
21 purpose, and that the applicant is a suitable person to be licensed. Hunting, target shooting, or self-
22 defense shall be considered a proper purpose. The license shall be valid for all allowable purposes
23 regardless of the purpose for which it was originally issued. The license shall be in duplicate and
24 shall bear the name, address, description, and signature of the licensee. The original shall be
25 delivered to the licensee and the duplicate shall be preserved by the people issuing the same for [4] 5
26 years. When required, license renewal shall take place within the month of the [~~fourth~~] *fifth*
27 anniversary of the license holder's date of birth following the date of issuance. The license shall be
28 issued within 14 days after application, and, if such application is denied, the reason for such denial
29 shall be stated in writing, the original of which such writing shall be delivered to the applicant, and
30 a copy kept in the office of the person to whom the application was made. The fee for licenses issued
31 to residents of the state shall be \$10, which fee shall be for the use of the law enforcement
32 department of the town or city granting said licenses; the fee for licenses granted to out-of-state
33 residents shall be [~~\$100~~] *\$50*, which fee shall be for the use of the state. The director of state police
34 is hereby authorized and directed to prepare forms for the licenses required under this chapter and
35 forms for the application for such licenses and to supply the same to officials of the cities and towns
36 authorized to issue the licenses. *The form shall require no more information than was*
37 *required on the state of New Hampshire application for pistol/revolver license, form DSSP*



1 **85, as revised in December 2009.** No other forms shall be used by officials of cities and towns.
2 The cost of the forms shall be paid out of the fees received from nonresident licenses.

3 8 Pistols and Revolvers; Reciprocity. Amend RSA 159:6-d to read as follows:

4 159:6-d Full Faith and Credit for Licenses From Other States; Reciprocity. [~~Notwithstanding~~
5 ~~the provisions of RSA 159:6,~~] No nonresident [~~holding a current and valid license to carry a loaded~~
6 ~~pistol or revolver in the state in which he resides~~] or [~~who is a~~] peace officer [~~in the state in which he~~
7 ~~resides,~~] shall be required to obtain a license to carry a loaded pistol or revolver within this state if:

8 I. Such nonresident carries upon his person the license held from the state in which he
9 resides; [~~and~~] *or*

10 *II. Such nonresident is in compliance with RSA 159:4; or*

11 [~~II-~~] *III.* The state in which such person is a resident provides a reciprocal privilege for
12 residents of this state.

13 9 Pistols and Revolvers; Exemption. Amend RSA 159:14 to read as follows:

14 159:14 Exemption. None of the provisions of this chapter shall prohibit an individual not
15 licensed under the provisions thereof who is not engaged in the business of selling pistols or
16 revolvers from selling a pistol or revolver to a person *qualified pursuant to RSA 159:4, or who is*
17 licensed under this chapter, or to a person personally known to him *or her.*

18 10 Game Animals; Bow and Arrow. Amend RSA 208:5, V to read as follows:

19 V. The licensee shall not be entitled to carry any firearms while hunting under the
20 provisions of this section, unless such licensee also possesses a valid firearms hunting license [~~or a~~
21 ~~valid license to carry firearms issued pursuant to RSA 159~~] *or is otherwise qualified pursuant to*
22 *RSA 159:4.*

23 11 New Section; Justification; Civil Immunity. Amend RSA 627 by inserting after section 1 the
24 following new section:

25 627:1-a Civil Immunity. A person who uses force in self-protection or in the protection of other
26 persons pursuant to RSA 627:4, in the protection of premises and property pursuant to RSA 627:7
27 and 627:8, in law enforcement pursuant to RSA 627:5, or in the care or welfare of a minor pursuant
28 to RSA 627:6, is justified in using such force and shall be immune from civil liability for personal
29 injuries sustained by a perpetrator which were caused by the acts or omissions of the person as a
30 result of the use of force. In a civil action initiated by or on behalf of a perpetrator against the
31 person, the court shall award the person reasonable attorney's fees, and costs, including but not
32 limited to, expert witness fees, court costs, and compensation for loss of income.

33 12 Justification; Definitions. Amend RSA 627:9, IV to read as follows:

34 IV. "Non-deadly force" means any assault or confinement which does not constitute deadly
35 force. *The act of producing or displaying a weapon shall constitute non-deadly force.*

36 13 Repeal. RSA 21-P:14, II(f), relative to the authority of the commissioner of the department of
37 safety to adopt rules relative to the issuance of nonresident pistol permits, is repealed.

Amendment to SB 88

- Page 5 -



1 14 Effective Date.

2 I. Sections 1-2 of this act shall take effect 60 days after its passage.

3 II. The remainder of this act shall take effect upon its passage.

2011-2031h

AMENDED ANALYSIS

This bill:

I. Allows a person who is anywhere he or she has a right to be to use deadly force to protect oneself or a third person.

II. Provides that, except as otherwise prohibited by statute, a person who is anywhere he or she has a right to be and who displays or brandishes a firearm or other means of self-defense to warn off a threat shall not be guilty of criminal threatening.

III. Permits any person who meets the requirements established in RSA 159:4 to carry a firearm openly or concealed, loaded or unloaded, on or about his or her person or upon or in a vehicle.

IV. Removes, under certain circumstances, the requirement that nonresidents obtain a license to possess a firearm while in New Hampshire.

V. Inserts a civil immunity provision for the use of force against a perpetrator in certain circumstances.

VI. Deletes the minimum mandatory sentencing requirement for felony convictions which include the possession, use, or attempted use of a firearm.

VII. Amends the definition of "non-deadly force" to include the act of producing or displaying a weapon.

Amendment to SB 88

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to physical force in defense of a person, brandishing a firearm or other
4 means of self-defense, and carrying firearms.
5

6 Amend the bill by replacing all after the enacting clause with the following:

7

8 1 Physical Force in Defense of Person. Amend RSA 627:4, III to read as follows:

9 III. A person is not justified in using deadly force on another to defend himself or *herself* or
10 a third person from deadly force by the other if he *or she* knows that he *or she* and the third person
11 can, with complete safety:

12 (a) Retreat from the encounter, except that he *or she* is not required to retreat if he *or*
13 *she* is within his *or her* dwelling [or], its curtilage, *or anywhere he or she has a right to be*, and
14 was not the initial aggressor; or

15 (b) Surrender property to a person asserting a claim of right thereto; or

16 (c) Comply with a demand that he *or she* abstain from performing an act which he *or*
17 *she* is not obliged to perform; nor is the use of deadly force justifiable when, with the purpose of
18 causing death or serious bodily harm, the [actor] *person* has provoked the use of force against
19 himself *or herself* in the same encounter[-]; *or*

20 (d) If he *or she* is a law enforcement officer or a private person assisting [him] *the*
21 *officer* at [his] *the officer's* direction and was acting pursuant to RSA 627:5, [he] *the person* need
22 not retreat.

23 2 Sentences and Limitations. Amend RSA 651:2, II-g to read as follows:

24 II-g. If a person is convicted of a felony, an element of which is the possession, use or
25 attempted use of a deadly weapon, and the deadly weapon is a firearm, such person may be
26 sentenced to a maximum term of 20 years' imprisonment in lieu of any other sentence prescribed for
27 the crime. ~~[The person shall be given a minimum mandatory sentence of not less than 3 years'~~
28 ~~imprisonment for a first offense and a minimum mandatory sentence of not less than 6 years'~~
29 ~~imprisonment if such person has been previously convicted of any state or federal offense for which~~
30 ~~the maximum penalty provided was imprisonment in excess of one year, and an element of which~~
31 ~~was the possession, use or attempted use of a firearm. Neither the whole nor any part of the~~
32 ~~minimum sentence imposed under this paragraph shall be suspended or reduced.]~~

Amendment to SB 88

- Page 2 -

1 3 Pistols and Revolvers; Carrying Without License. RSA 159:4 is repealed and reenacted to read
2 as follows:

3 159:4 Carrying Without License.

4 I. Notwithstanding any provision of law to the contrary, no person shall be guilty of an
5 offense for carrying a firearm, openly or concealed, loaded or unloaded, upon or about his or her
6 person, or upon or in a vehicle, whether or not such person possesses a license, permit, or other
7 authorization to carry a firearm.

8 II. The provisions of paragraph I shall not constitute a bar to prosecution for any of the
9 following offenses:

10 (a) RSA 159:3, relative to convicted felons.

11 (b) RSA 159:3-a, relative to armed career criminals.

12 (c) RSA 159:19, relative to courthouse security.

13 (d) RSA 207:7, relative to hunting from a motor vehicle, OHRV, snowmobile, boat, or
14 aircraft.

15 (e) RSA 215-A:20, relative to loaded firearms on an OHRV.

16 (f) RSA 215-C:35, relative to loaded firearms on a snowmobile.

17 (g) RSA 637:7, relative to receiving stolen property.

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19 (i) RSA 597:7-a, relative to default or breach of conditions of release.

20 4 Pistols and Revolvers; Exceptions. Amend RSA 159:5 to read as follows:

21 159:5 Exceptions. ~~[The provisions of]~~ RSA 159:3 ~~[and 4]~~ shall not apply to marshals, sheriffs,
22 policemen or other duly appointed peace and other law enforcement officers, or bailiffs and court
23 officers responsible for court security; nor to the regular and ordinary transportation of pistols or
24 revolvers as merchandise, nor to members of the armed services of the United States when on duty;
25 nor to the national guard when on duty; nor to organizations by law authorized to purchase or
26 receive such weapons; nor to duly authorized military or civil organizations when parading, or the
27 members thereof when at, or going to or from, their customary places of assembly.

28 5 Pistols and Revolvers; Optional License to Carry. Amend RSA 159:6, I to read as follows:

29 I. The selectmen of a town or the mayor or chief of police of a city or some full-time police
30 officer designated by them respectively, upon application of any resident of such town or city, or the
31 director of state police, or some person designated by such director, upon application of a
32 nonresident, shall issue a license to such applicant authorizing the applicant to carry a loaded pistol
33 or revolver in this state for not less than ~~[4]~~ 5 years from the date of issue, if it appears that the
34 applicant has good reason to fear injury to the applicant's person or property or has any proper
35 purpose, and that the applicant is a suitable person to be licensed. Hunting, target shooting, or self-
36 defense shall be considered a proper purpose. The license shall be valid for all allowable purposes
37 regardless of the purpose for which it was originally issued. The license shall be in duplicate and

Amendment to SB 88

- Page 3 -

1 shall bear the name, address, description, and signature of the licensee. The original shall be
2 delivered to the licensee and the duplicate shall be preserved by the people issuing the same for [4] 5
3 years. When required, license renewal shall take place within the month of the ~~[fourth]~~ *fifth*
4 anniversary of the license holder's date of birth following the date of issuance. The license shall be
5 issued within 14 days after application, and, if such application is denied, the reason for such denial
6 shall be stated in writing, the original of which such writing shall be delivered to the applicant, and
7 a copy kept in the office of the person to whom the application was made. The fee for licenses issued
8 to residents of the state shall be \$10, which fee shall be for the use of the law enforcement
9 department of the town or city granting said licenses; the fee for licenses granted to out-of-state
10 residents shall be ~~[\$100]~~ *\$50*, which fee shall be for the use of the state. The director of state police
11 is hereby authorized and directed to prepare forms for the licenses required under this chapter and
12 forms for the application for such licenses and to supply the same to officials of the cities and towns
13 authorized to issue the licenses. *The form shall require no more information than was*
14 *required on the state of New Hampshire application for pistol/revolver license, form DSSP*
15 *85, as revised in December 2009.* No other forms shall be used by officials of cities and towns.
16 The cost of the forms shall be paid out of the fees received from nonresident licenses.

17 6 Pistols and Revolvers; Reciprocity. Amend RSA 159:6-d to read as follows:

18 159:6-d Full Faith and Credit for Licenses From Other States; Reciprocity. [~~Notwithstanding~~
19 ~~the provisions of RSA 159:6,~~] No nonresident [~~holding a current and valid license to carry a loaded~~
20 ~~pistol or revolver in the state in which he resides~~] or [~~who is a~~] peace officer [~~in the state in which he~~
21 ~~resides,~~] shall be required to obtain a license to carry a loaded pistol or revolver within this state if:

22 I. Such nonresident carries upon his person the license held from the state in which he
23 resides; [~~and~~] *or*

24 *II. Such nonresident is in compliance with RSA 159:4; or*

25 [~~II.~~] *III.* The state in which such person is a resident provides a reciprocal privilege for
26 residents of this state.

27 7 Pistols and Revolvers; Exemption. Amend RSA 159:14 to read as follows:

28 159:14 Exemption. None of the provisions of this chapter shall prohibit an individual not
29 licensed under the provisions thereof who is not engaged in the business of selling pistols or
30 revolvers from selling a pistol or revolver to a person *qualified pursuant to RSA 159:4, or who is*
31 *licensed under this chapter, or to a person personally known to him or her.*

32 8 Game Animals; Bow and Arrow. Amend RSA 208:5, V to read as follows:

33 V. The licensee shall not be entitled to carry any firearms while hunting under the
34 provisions of this section, unless such licensee also possesses a valid firearms hunting license [~~or a~~
35 ~~valid license to carry firearms issued pursuant to RSA 159]~~ *or is otherwise qualified pursuant to*
36 *RSA 159:4.*

37 9 New Section; Justification; Civil Immunity. Amend RSA 627 by inserting after section 1 the

Amendment to SB 88

- Page 4 -

1 following new section:

2 627:1-a Civil Immunity. A person who uses force in self-protection or in the protection of other
3 persons pursuant to RSA 627:4, in the protection of premises and property pursuant to RSA 627:7
4 and 627:8, in law enforcement pursuant to RSA 627:5, or in the care or welfare of a minor pursuant
5 to RSA 627:6, is justified in using such force and shall be immune from civil liability for personal
6 injuries sustained by a perpetrator which were caused by the acts or omissions of the person as a
7 result of the use of force. In a civil action initiated by or on behalf of a perpetrator against the
8 person, the court shall award the person reasonable attorney's fees, and costs, including but not
9 limited to, expert witness fees, court costs, and compensation for loss of income.

10 10 Justification; Definitions. Amend RSA 627:9, IV to read as follows:

11 IV. "Non-deadly force" means any assault or confinement which does not constitute deadly
12 force. ***The act of producing or displaying a weapon shall constitute non-deadly force.***

13 11 Repeal. RSA 21-P:14, II(f), relative to the authority of the commissioner of the department of
14 safety to adopt rules relative to the issuance of nonresident pistol permits, is repealed.

15 12 Effective Date.

16 I. Section 1 of this act shall take effect 60 days after its passage.

17 II. The remainder of this act shall take effect upon its passage.

2011-2156h

AMENDED ANALYSIS

This bill:

I. Allows a person who is anywhere he or she has a right to be to use deadly force to protect oneself or a third person.

II. Permits any person who meets the requirements established in RSA 159:4 to carry a firearm openly or concealed, loaded or unloaded, on or about his or her person or upon or in a vehicle.

III. Removes, under certain circumstances, the requirement that nonresidents obtain a license to possess a firearm while in New Hampshire.

IV. Inserts a civil immunity provision for the use of force against a perpetrator in certain circumstances.

V. Deletes the minimum mandatory sentencing requirement for felony convictions which include the possession, use, or attempted use of a firearm.

VI. Amends the definition of "non-deadly force" to include the act of producing or displaying a weapon.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON SB 88

BILL TITLE: (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

DATE: April 12, 2011

LOB ROOM: 204 **Time Public Hearing Called to Order:** 1:05 p.m.

Time Adjourned: 2:00 p.m.

(please circle if present)

Committee Members: Reps. Swinford, Gagne, Welch, Fields, Fesh, Charron, Villeneuve, Antosz, Greazzo, Kreis, Carson, Tasker, Warden, Pantelakos, Berube, Shurtleff and Ginsburg. ^{absent} Rep. S. Cataldo

Bill Sponsors: Sen. Boutin, Dist 16; Sen. Barnes, Jr., Dist 17; Sen. Bradley, Dist 3; Sen. Carson, Dist 14; Sen. Bragdon, Dist 11; Sen. DeBlois, Dist 18; Sen. Forsythe, Dist 4; Sen. Gallus, Dist 1; Sen. Groen, Dist 6; Sen. Lambert, Dist 13; Sen. Luther, Dist 12; Sen. White, Dist 9; Rep. Baladasaro, Rock 3; Rep. Jennifer Coffey, Merr 6; Rep. Swinford, Belk 5

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Sen. Boutin - Support and testify on SB 88. This is not a gun bill. This is a self-defense bill. The castle doctrine states that your home is your castle and is protected from prosecution i.e. RSA 627:1. In this bill you have the right to protect one-self. One needs to affirm its right not to re-treat. HB 378 in Section 3: defines non-deadly force and would address this "Ward Bird" case request.

***Rep. Welch:**

Q) Looking at the bill, and suspect any reason two dates are incorporated?

A) Senate ways of testing the House - and delete that section would be the best way.

***Rep. Pantelakos:**

Q) Do you believe that this was written so as not to just kill a person?

A) I am concerned about the sanctity of this bill and also to protect themselves.

Q) Someone tried to retreat – then what?

SB 88 Page Two

A) Example – woman killed in parking lot was killed and could have protected herself and would be alive today.

Rep. Baldasaro - I have been in a position in a place with no gun – you do what you have to do – and retreat may be the last thing you do. I know that retreat is not an option. We need to have that right to protect oneself.

*Rep. Welch:

Q) A draft for 627 at the bottom – i.e would it be or could it be amended – i.e Line 21?

A) Yes or No.

Q) If you are brought into court?

A) If you are found not guilty – you should not pay. I've seen it where a man pulled a gun and a breach of a piece was done when he was arrested – and if brought to court should get his money for court cost.

Assistant Attorney General Ann Rice - Handout – (Oppose Bill)

If someone claims that they were acting in self defense – a person does not have to prove. The state has the burden. We believe there is no problem. That is why we have juries.

Rep. Cataldo:

Q) If I can't run or retreat and I have a gun – what do I do?

A) You best defense yourself.

Q) Question – someone climbing into your home?

A) You can defend yourself because of the castle doctrine.

Ralph Demicco - Member of GONH. We believe that the part removed should be back in this bill. Because a person was not justified in pointing

SB 88 Page Three

a gun. Who provoked the altercation is the question is to eliminate the language to re-treat.

Rep. Pantelakos

Q) In respect to banishing a gun from one car to another.

A) Can't see that happening.

Q) We hear it in the news and gives them the right to protect oneself.

A) How to I resolve one.

Rep. Fields

Q) If you saw three men on your car could you walk back and call police?

A) Not really.

Rep. Welch

Q) Do you consider using deadly force?

A) Deadly force is not shooting.

Hon. James E. Wheeler - Representing NH Firearms Coalition. We support the concept of the bill - move forward and pass.

Rep. Welch

Q) Do you believe we should remove non-deadly force?

A) Can't answer - sounds good but would have to take it to the board.

Penny Dean - Self. I do not believe we have good self-defense laws. You don't have to prove if your guilty or not to raise it as a practical matter.

NOTE: Will provide handout of court cases. I feel that this bill lacks good statute and it should be enumerated. Case of Ward Bird is a good example of retreat in ones home and property. Civil immunity is wonderful if one

can re-treat. This language can be problematic. This bill should be held over and re-vamped to clear the courts as a practical matter.

Hon. Wheeler - Re-read Rep. Welch amendment and concerned about the draft amendment.

Respectfully Submitted:

A handwritten signature in cursive script, appearing to read "Sam Cataldo".

Rep. Sam A. Cataldo, Acting Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON SB 88

BILL TITLE: (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

DATE: April 12, 2011

LOB ROOM: 204 Time Public Hearing Called to Order: 1:05 Time Adjourned: 2:00

(please circle if present)

Committee Members: Reps. Swinford, Gagne, Welch, Fields, Fesh, Charron, Villeneuve, Antosz, Greazzo, Kreis, Parsons, Tasker, Warden, Pantelakos, Berube, Shurtleff and Ginsburg. CATALDO ABSENT

Bill Sponsors: Sen. Boutin, Dist 16; Sen. Barnes, Jr., Dist 17; Sen. Bradley, Dist 3; Sen. Carson, Dist 14; Sen. Bragdon, Dist 11; Sen. DeBlois, Dist 18; Sen. Forsythe, Dist 4; Sen. Gallus, Dist 1; Sen. Groen, Dist 6; Sen. Lambert, Dist 13; Sen. Luther, Dist 12; Sen. White, Dist 9; Rep. Baladasaro, Rock 3; Rep. Jennifer Coffey, Merr 6; Rep. Swinford, Belk 5

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

→ SEN. BOUTIN - support + testify on SB-88 - this is not a gun Bill - this is a self-defense Bill. The castle doctrine states that your home is your castle + is protected from prosecution i.e. RSA 629:1. In this Bill you have the right to protect one-self. One needs to affirm its right not to retreat. HB 378 in Section 3, defines non-deadly force. And would address the 'word BIRD' case Request

* Rep Welch Q) looking at the Bill, I suspect any reason two dates are incorporated A) Senate ways of testing the House - and delete that section would be the best way

* Rep Renta Q) Do you believe that this was written so as not to just kill a person

a) I am concerned about the ^{SANCTITY} sanctity of this Bill and also to protect themselves.

Q) someone tried to retreat - then what?

A) example - women killed in parking lot was killed & could have protected herself & would be ~~not~~ alive today

→ Rep Baldasoro - I have been in a position in a place with no gun - you do what you have to do - and retreat may be the last thing you do. I know that retreat is not an option. We need to have that right to protect oneself.

* Rep Welch Q) a draft for 627 at the bottom - i.e would it be or could it be amended - i.e Line 71

A) YES + NO

Q) if you are brought into court

A) if your found not guilty - you should not pay. I've seen it where a man pulled a gun & a ~~bad~~ breach of a piece was done when he was arrested - and if brought to court should get his money for court cost

→ Asst. AG Ann Riccio - Handout ① (oppose Bill)

If someone claims that they were acting in ~~self~~ self defence - a person does not have to prove. The state has the burden. We believe there is no problem. That's why we have juries.

→ Hon James E. Wheeler - representing NH Firearms coalition - we support the concept of the Bill - move forward & pass

* Rep Welch Q) do you believe we should remove non-deadly force

A) Can't answer - sounds good but would have to take it to the board

→ Penny Dean - self. I do not believe we have good self-defence laws. You don't have to prove if your guilty or not to raise it as a practical matter

NOTE: will provide handout of court cases!

I feel that this Bill lacks good statutes. And it should be enumerated. Case of Ward Bird is a good example of retreat in ones home and property. Civil immunity is wonderful if we can retreat. This language ~~can~~ can be problematic. This Bill should be held over + re-vamped to clear the courts as a practical matter.

→ Hon Wheeler - re-read Rep. Welch amendment & concerned about this draft amendment

627!!

* Rep CONTRAldo Q) if I can't run or retreat + I have a gun - what do I do?

A) you best defence yourself

Q) question - someone climbing into your house -

A) you can defend yourself because of the castle doctrine

→ Ralph Demarco - member of GONH, we believe that the part removed should be back in this Bill. Because a person was not justified in pointing a gun, who provoked the altercation is the question is to eliminate the language to ~~re-tract~~ re-tract.

* Rep Panta - Q) in respect to banishes a gun from car to another

A) can't see that happening

Q) we hear it in the news + gives them the right to protect oneself

A) how do I resolve one

* Rep fields Q) if you saw 3 men on your car could you walk back + call police

A) not really

* Rep Walch Q) do you consider using deadly force

A) deadly force is not shooting

Sub-Committee Actions

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY
*RECONVENED, RECESSED FROM MAY 4, 2011
SUBCOMMITTEE WORK SESSION ON SB 88

BILL TITLE: (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

DATE: May 10, 2011

Subcommittee Members: Reps. K. Kreis, Chair, Welch, Ginsburg, Warden and Antosz

Comments and Recommendations:

Amendments:

Sponsor: Rep. Kenneth Kreis	OLS Document #:	2011	1691h
Sponsor: Rep.	OLS Document #:		
Sponsor: Rep.	OLS Document #:		

Motions: OTP, OTP/A ITL, Retained (Please circle one.)

Moved by Rep. Mark Warden

Seconded by Rep. David Welch

Vote: 3-1

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Kenneth Kreis, Chair
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY
*RECONVENED, RECESSED FROM MAY 3, 2011
SUBCOMMITTEE WORK SESSION ON SB 88

BILL TITLE: (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

DATE: ~~May 4, 2011~~ 5 - 10 - - 11

Subcommittee Members: Reps. Ken Kreis, Chair, Rep. Welch, Rep. Ginsburg, Rep. Warden and Rep. Antosz

Comments and Recommendations:

Amendments:

Sponsor: Rep. KREIS OLS Document #: 2011-16914
Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:

Motions: OTP OTP/A ITL, Retained (Please circle one.)

Moved by Rep. WARDEN

Seconded by Rep. WELCH

Vote: 3 - (1)

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Kenneth Kreis
Subcommittee Chairman/Clerk

Sub-Committee Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY
Recessed until April 26, 2011
SUBCOMMITTEE WORK SESSION ON SB 88

BILL TITLE: (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

DATE: April 21, 2011 10:00 a.m. - 11:00 a.m. Recessed.

Subcommittee Members: Reps. Kreis, Welch, Warden, Ginsburg

Comments and Recommendations:

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Kenneth Kreis, Chairman
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

SUBCOMMITTEE WORK SESSION ON SB 88

BILL TITLE: (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

DATE: 4-20-11 10A-11A Recessed.

Subcommittee Members: Reps. KRETS, WELCH, WARDEN, GINSBERG

Comments and Recommendations:

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY
*RECONVENED, RECESSED FROM APRIL 21, 2011
SUBCOMMITTEE WORK SESSION ON SB 88

BILL TITLE: (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

DATE: April 26, 2011

Subcommittee Members: Reps. Ken Kreis

Comments and Recommendations:

Amendments:

Sponsor: Rep.

Sponsor: Rep.

Sponsor: Rep.

Motions: OTP, OTP/A, ITL, Re

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Re

Moved by Rep.

Seconded by Rep.

Vote:

Recessed

will be

rescheduled

Ken

*4/26
Recessed
Date to
Follow*

4/28/11

*Rep. Kreis advised
he would email me with
date for new hearing.*

St

Rep. Swinford, Belk. 5
Rep. Kreis, Merr. 6
Rep. Welch, Rock. 8
May 19, 2011
2011-2031h
04/01

Amendment to SB 88

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to physical force in defense of a person, brandishing a firearm or other
4 means of self-defense, and carrying firearms.
5

6 Amend the bill by replacing all after the enacting clause with the following:

7

8 1 Physical Force in Defense of Person. Amend RSA 627:4, III to read as follows:

9 III. A person is not justified in using deadly force on another to defend himself or *herself or*
10 a third person from deadly force by the other if he *or she* knows that he *or she* and the third person
11 can, with complete safety:

12 (a) Retreat from the encounter, except that he *or she* is not required to retreat if he *or*
13 *she* is within his *or her* dwelling [or], its curtilage, *or anywhere he or she has a right to be*, and
14 was not the initial aggressor; or

15 (b) Surrender property to a person asserting a claim of right thereto; or

16 (c) Comply with a demand that he *or she* abstain from performing an act which he *or*
17 *she* is not obliged to perform; nor is the use of deadly force justifiable when, with the purpose of
18 causing death or serious bodily harm, the [æter] *person* has provoked the use of force against
19 himself *or herself* in the same encounter[-]; *or*

20 (d) If he *or she* is a law enforcement officer or a private person assisting [him] *the*
21 *officer* at [his] *the officer's* direction and was acting pursuant to RSA 627:5, [he] *the person* need
22 not retreat.

23 2 Criminal Threatening. Amend RSA 631:4, IV to read as follows:

24 IV. *Except as otherwise prohibited by statute*, a person *who is anywhere he or she*
25 *has a right to be and* who responds to a threat which would be considered by a reasonable person
26 as likely to cause serious bodily injury or death to the person or to another by displaying *or*
27 *brandishing* a firearm or other means of self-defense with the intent to warn away the person
28 making the threat shall not have committed a criminal act under this section.

29 3 Sentences and Limitations. Amend RSA 651:2, II-g to read as follows:

30 II-g. If a person is convicted of a felony, an element of which is the possession, use or
31 attempted use of a deadly weapon, and the deadly weapon is a firearm, such person may be

Amendment to SB 88

- Page 2 -

1 sentenced to a maximum term of 20 years' imprisonment in lieu of any other sentence prescribed for
2 the crime. [~~The person shall be given a minimum mandatory sentence of not less than 3 years'~~
3 ~~imprisonment for a first offense and a minimum mandatory sentence of not less than 6 years'~~
4 ~~imprisonment if such person has been previously convicted of any state or federal offense for which~~
5 ~~the maximum penalty provided was imprisonment in excess of one year, and an element of which~~
6 ~~was the possession, use or attempted use of a firearm. Neither the whole nor any part of the~~
7 ~~minimum sentence imposed under this paragraph shall be suspended or reduced.]~~

8 4 Statement of Intent.

9 I. The general court finds that on June 21, 1788, in convention, the people of the state of
10 New Hampshire did impartially discuss and fully considered the Constitution for the United States
11 of America.

12 II. The general court acknowledges the specific conditional terms of ratification in article
13 first wherein it "explicitly declares that all powers not expressly and particularly delegated by the
14 aforesaid constitution are reserved to the several states to be, by them exercised."

15 III. Article twelfth clearly states, "Congress shall never disarm any citizen unless such as
16 are or have been in actual rebellion."

17 IV. Art. 2-a. of the New Hampshire State Constitution clearly states, "All persons have the
18 right to keep and bear arms in defense of themselves, their families, their property and the state."

19 V. The Second Amendment of the United States Constitution clearly enumerates "the right
20 of the people to keep and bear arms shall not be infringed;" and

21 VI. The United States Supreme Court has recently upheld the Second Amendment of the
22 United States as an individual right premised upon self defense and hunting and made such rights
23 enforceable to the States through the Fourteenth Amendment.

24 5 Pistols and Revolvers; Carrying Without License. RSA 159:4 is repealed and reenacted to read
25 as follows:

26 159:4 Carrying Without License.

27 I. Notwithstanding any provision of law to the contrary, no person shall be guilty of an
28 offense for carrying a firearm, openly or concealed, loaded or unloaded, upon or about his or her
29 person, or upon or in a vehicle, whether or not such person possesses a license, permit, or other
30 authorization to carry a firearm.

31 II. The provisions of paragraph I shall not constitute a bar to prosecution for any of the
32 following offenses:

33 (a) RSA 159:3, relative to convicted felons.

34 (b) RSA 159:3-a, relative to armed career criminals.

35 (c) RSA 159:19, relative to courthouse security.

36 (d) RSA 207:7, relative to hunting from a motor vehicle, OHRV, snowmobile, boat, or
37 aircraft.

Amendment to SB 88

- Page 3 -

- 1 (e) RSA 215-A:20, relative to loaded firearms on an OHRV.
- 2 (f) RSA 215-C:35, relative to loaded firearms on a snowmobile.
- 3 (g) RSA 637:7, relative to receiving stolen property.
- 4 (h) RSA 637:7-a, relative to possession of property without a serial number.
- 5 (i) RSA 597:7-a, relative to default or breach of conditions of release.

6 Pistols and Revolvers; Exceptions. Amend RSA 159:5 to read as follows:

7 159:5 Exceptions. [~~The provisions of~~] RSA 159:3 [~~and 4~~] shall not apply to marshals, sheriffs,
8 policemen or other duly appointed peace and other law enforcement officers, or bailiffs and court
9 officers responsible for court security; nor to the regular and ordinary transportation of pistols or
10 revolvers as merchandise, nor to members of the armed services of the United States when on duty;
11 nor to the national guard when on duty; nor to organizations by law authorized to purchase or
12 receive such weapons; nor to duly authorized military or civil organizations when parading, or the
13 members thereof when at, or going to or from, their customary places of assembly.

14 7 Pistols and Revolvers; Optional License to Carry. Amend RSA 159:6, I to read as follows:

15 I. The selectmen of a town or the mayor or chief of police of a city or some full-time police
16 officer designated by them respectively, upon application of any resident of such town or city, or the
17 director of state police, or some person designated by such director, upon application of a
18 nonresident, shall issue a license to such applicant authorizing the applicant to carry a loaded pistol
19 or revolver in this state for not less than [4] 5 years from the date of issue, if it appears that the
20 applicant has good reason to fear injury to the applicant's person or property or has any proper
21 purpose, and that the applicant is a suitable person to be licensed. Hunting, target shooting, or self-
22 defense shall be considered a proper purpose. The license shall be valid for all allowable purposes
23 regardless of the purpose for which it was originally issued. The license shall be in duplicate and
24 shall bear the name, address, description, and signature of the licensee. The original shall be
25 delivered to the licensee and the duplicate shall be preserved by the people issuing the same for [4] 5
26 years. When required, license renewal shall take place within the month of the [~~fourth~~] fifth
27 anniversary of the license holder's date of birth following the date of issuance. The license shall be
28 issued within 14 days after application, and, if such application is denied, the reason for such denial
29 shall be stated in writing, the original of which such writing shall be delivered to the applicant, and
30 a copy kept in the office of the person to whom the application was made. The fee for licenses issued
31 to residents of the state shall be \$10, which fee shall be for the use of the law enforcement
32 department of the town or city granting said licenses; the fee for licenses granted to out-of-state
33 residents shall be [~~\$100~~] \$50, which fee shall be for the use of the state. The director of state police
34 is hereby authorized and directed to prepare forms for the licenses required under this chapter and
35 forms for the application for such licenses and to supply the same to officials of the cities and towns
36 authorized to issue the licenses. *The form shall require no more information than was*
37 *required on the state of New Hampshire application for pistol/revolver license, form DSSP*

1 **85, as revised in December 2009.** No other forms shall be used by officials of cities and towns.
2 The cost of the forms shall be paid out of the fees received from nonresident licenses.

3 8 Pistols and Revolvers; Reciprocity. Amend RSA 159:6-d to read as follows:

4 159:6-d Full Faith and Credit for Licenses From Other States; Reciprocity. [~~Notwithstanding~~
5 ~~the provisions of RSA 159:6,~~] No nonresident [~~holding a current and valid license to carry a loaded~~
6 ~~pistol or revolver in the state in which he resides]~~ or [~~who is a~~] peace officer [~~in the state in which he~~
7 ~~resides,~~] shall be required to obtain a license to carry a loaded pistol or revolver within this state if:

8 I. Such nonresident carries upon his person the license held from the state in which he
9 resides; ~~and~~ **or**

10 **II. Such nonresident is in compliance with RSA 159:4; or**

11 [~~II.~~] **III.** The state in which such person is a resident provides a reciprocal privilege for
12 residents of this state.

13 9 Pistols and Revolvers; Exemption. Amend RSA 159:14 to read as follows:

14 159:14 Exemption. None of the provisions of this chapter shall prohibit an individual not
15 licensed under the provisions thereof who is not engaged in the business of selling pistols or
16 revolvers from selling a pistol or revolver to a person **qualified pursuant to RSA 159:4, or who is**
17 **licensed under this chapter, or to a person personally known to him or her.**

18 10 Game Animals; Bow and Arrow. Amend RSA 208:5, V to read as follows:

19 V. The licensee shall not be entitled to carry any firearms while hunting under the
20 provisions of this section, unless such licensee also possesses a valid firearms hunting license [~~or a~~
21 ~~valid license to carry firearms issued pursuant to RSA 159]~~ **or is otherwise qualified pursuant to**
22 **RSA 159:4.**

23 11 New Section; Justification; Civil Immunity. Amend RSA 627 by inserting after section 1 the
24 following new section:

25 627:1-a Civil Immunity. A person who uses force in self-protection or in the protection of other
26 persons pursuant to RSA 627:4, in the protection of premises and property pursuant to RSA 627:7
27 and 627:8, in law enforcement pursuant to RSA 627:5, or in the care or welfare of a minor pursuant
28 to RSA 627:6, is justified in using such force and shall be immune from civil liability for personal
29 injuries sustained by a perpetrator which were caused by the acts or omissions of the person as a
30 result of the use of force. In a civil action initiated by or on behalf of a perpetrator against the
31 person, the court shall award the person reasonable attorney's fees, and costs, including but not
32 limited to, expert witness fees, court costs, and compensation for loss of income.

33 12 Justification; Definitions. Amend RSA 627:9, IV to read as follows:

34 IV. "Non-deadly force" means any assault or confinement which does not constitute deadly
35 force. **The act of producing or displaying a weapon shall constitute non-deadly force.**

36 13 Repeal. RSA 21-P:14, II(f), relative to the authority of the commissioner of the department of
37 safety to adopt rules relative to the issuance of nonresident pistol permits, is repealed.

Amendment to SB 88

- Page 5 -

1 14 Effective Date.

2 I. Sections 1-2 of this act shall take effect 60 days after its passage.

3 II. The remainder of this act shall take effect upon its passage.

2011-2031h

AMENDED ANALYSIS

This bill:

I. Allows a person who is anywhere he or she has a right to be to use deadly force to protect oneself or a third person.

II. Provides that, except as otherwise prohibited by statute, a person who is anywhere he or she has a right to be and who displays or brandishes a firearm or other means of self-defense to warn off a threat shall not be guilty of criminal threatening.

III. Permits any person who meets the requirements established in RSA 159:4 to carry a firearm openly or concealed, loaded or unloaded, on or about his or her person or upon or in a vehicle.

IV. Removes, under certain circumstances, the requirement that nonresidents obtain a license to possess a firearm while in New Hampshire.

V. Inserts a civil immunity provision for the use of force against a perpetrator in certain circumstances.

VI. Deletes the minimum mandatory sentencing requirement for felony convictions which include the possession, use, or attempted use of a firearm.

VII. Amends the definition of "non-deadly force" to include the act of producing or displaying a weapon.

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY
*RECONVENED, RECESSED FROM APRIL 26, 2011
SUBCOMMITTEE WORK SESSION ON SB 88

BILL TITLE: (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

DATE: May 3, 2011

Subcommittee Members: Reps. Ken Kreis, Chair, Rep. Welch, Rep. Ginsburg, Rep. Warden and Rep. Antosz

Comments and Recommendations: **RECESSED UNTIL MAY 4, 2011
AFTER SESSION.**

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Ken Kreis
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY
*RECONVENED, RECESS FROM APRIL 26, 2011
SUBCOMMITTEE WORK SESSION ON SB 88

BILL TITLE: (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

DATE: 5-3-11

Recessed until tomorrow 5-4-11 after session

Subcommittee Members: Reps. Ken Kreis, Chair, Rep. Weld, Rep. Grogan, Rep. Anderson, Rep. Artoz

Comments and Recommendations:

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL

Moved by Rep.

Seconded by Rep.

Vote:

*Recessed
until
5-4-
after
session*

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY
RECONVENED, RECESSED FROM MAY 3, 2011
SUBCOMMITTEE WORK SESSION ON SB 88

BILL TITLE: (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

DATE: May 4, 2011

Subcommittee Members: Reps. Ken Kreis, Chair, Rep. Welch, Rep. Ginsburg, Rep. Warden and Rep. Antosz

Comments and Recommendations: NOTES NOT TAKEN AT SUBCOMMITTEE HEARING.

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Kenneth Kreis
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

SUBCOMMITTEE WORK SESSION ON SB 88

BILL TITLE: (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

DATE: May 24, 2011

Subcommittee Members: Reps.

Comments and Recommendations:

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

Testimony

An Open Letter to the NRA

As the Chair of the House Criminal Justice and Public Safety Committee in the State of New Hampshire, I am writing to you to set the record straight regarding the statement posted on your website about HB330. You have been given misinformation (I prefer not to call anyone a liar) by your state NRA-ILA representative, John Hohenwarter. I do not appreciate his unprofessional behavior, which has been contrary and harmful to NRA's reputation.

HB 330 was carefully crafted to do one thing, to return to the people of New Hampshire their right to carry concealed without asking for or paying for the government's permission to exercise a Constitutional right. This bill was vetted in the House of Representatives not once, but four times.

There was a public hearing, and the people of New Hampshire came to express their feelings and opinions. There were multiple public subcommittee meetings, which your State affiliate GO-NH and your representative Mr. Hohenwarter failed to attend. Many others did attend and voice their concerns and opinions, which were taken into consideration by the committee.

The only communication with the subcommittee by GO-NH/Hohenwarter was via an e-mail which suggested the so-called "NRA amendment." This amendment was considered and rejected by the committee, in part because it was too extensive, proposed new gun control measures, instituted new criminal penalties, and added NICS checks on licenses. For those reasons and others it was felt the amendment should be offered as a bill of its own so it would go through the proper process of a public hearing and vetting. HB330 was again heard in Executive Session, where the committee discusses the pros and cons of the bill, and finally it went before the whole House of Representatives for a vote of "ought to pass" or "inexpedient to legislate." The bill passed out of the House with a large margin of victory and was sent to the Senate.

Just prior to the full vote of the House, the "NRA amendment" was again presented to us via communication from the Majority office, but it was rejected again for the same reasons listed above; this was done with the full support of leadership, who agreed an amendment such as this one should never simply be attached to a bill, but vetted in the public eye on its own merits. Mr. Hohenwarter was again told to offer it as a second-year bill, so that the proper process could be followed. There are many in New Hampshire who would oppose new criminal penalties and question the mere addition of NICS checks as being ineffective to achieve a NICS-exempt carry license.

It is also likely your representative confused HB330 with another bill, HB536, which was retained in committee. The NRA criticisms of HB330 are in fact the problems contained in HB536, not HB330. I am not sure of Mr. Hohenwarter's personal agenda, but it has clearly been obstructionist. Furthermore, his unprofessional behavior is not what New Hampshire citizens deserve.

Sincerely,

Representative Elaine Swinford
Chair of the Criminal Justice and Public Safety Committee
Belknap – District 5

Testimony of Associate Attorney General Ann Rice
 April 12, 2011
 SB 88

- Attorney General's Office is opposed SB 88
- NH has a very strong self-defense law – establishes a careful balance between a person's right to use deadly force in self-defense on one side and the sanctity of human life and the safety of innocent members of the public on the other
 - Bill before you would dramatically alter that balance
 - increases the prospect of deadly encounters arising on our streets
- ~~SB 88~~ is very similar to a bill that was before committee 2 years ago
- After negotiations with bill's sponsor, reps of Gun Owners NH, the NRA, police chiefs, and AG, a bill was sponsored by Rep. Welch that was more narrowly tailored to address the identified problem
 - bill passed
 - enacted RSA 627:4, II-a and RSA 631:4, IV – individual who responds to a threat of deadly force by displaying a firearm w/intent to warn away the person making threat shall not have committed criminal act
- Historically, this committee's first question in considering legislation is "what problem is this intending to fix?"
- There is no problem that needs fixing
- A primer on self-defense law:
 - law defines when a person can use force against another person in self-defense or defense of another
 - two types of force – non-deadly force / deadly force
 - deadly force – any kind of assault that the person knows will create a substantial risk of causing death or serious bodily injury
 - purposely firing a gun at someone is, by statute, deadly force
 - swinging a baseball bat at someone's head
 - driving a car into someone
 - stabbing at someone with a knife
- The current law allows the use of deadly force under 4 specific circumstances
 - 3 of those apply where ever the person might be
 - 4th applies only in the person's home or curtilage
 - law is more permissive on the use of deadly force in one's home
 - gives greater protection to the sanctity to home
- First 3: a person can use deadly force against another in self-defense or defense of another when the person reasonably believes that the other person is
 - about to use unlawful deadly force against him or another person
 - is likely to use any unlawful force against another person present while committing or attempting to commit a burglary
 - is about to commit a kidnapping or forcible sex offense
 - ONLY IF SAFE RETREAT IS NOT AN OPTION AND PERSON IS NOT THE INITIAL AGGRESSOR
- Last one is limited to person's home

- allows deadly force if person reasonably believes that another person is likely to use any unlawful force in the commission of a felony against him
 - person using deadly force doesn't have to be responding to deadly force – any likely unlawful force
 - unlawful force could mean grabbing, pushing, kicking
 - no duty to retreat
 - lowers the bar for when deadly force is permissible
 - also eliminates the need for deadly force to be the last resort
- SB 88 would eliminate both duty to retreat and the requirement that the person using force not be the initial aggressor
 - Use of deadly force would no longer have to be the act of last resort
 - Would allow person to use deadly force in self-defense, even if he/she was the cause of the other person acting forcibly against him/her
- This committee passed HB 210, which would eliminate the duty to retreat, regardless of where the interaction took place
 - Use of deadly force would no longer have to be the act of last resort
 - SB 88 goes even further – eliminates the requirement that actor not be the first aggressor
- One of the arguments frequently advanced by proponents of these bills -- it's too hard for people to prove that they acted in self-defense
 - Person does not have to prove he/she acted in self-defense
 - By law, if someone is charged with a crime and claims self-defense, the State has to disprove self-defense beyond a reasonable doubt
 - there is a presumption that the person was justified in using deadly force, unless the State proves otherwise
- AG's Office investigates homicides
 - an average of 1-2 cases /year where we decide not to bring charges bc we don't think we can disprove a claim of self-defense
 - if there's a viable claim, we often make the decision not to prosecute or we may end up pleading the case to some lesser charge
- Prior years, proponents of bills claimed there were lots of cases being improperly prosecuted, people were being found not guilty when they raise self-defense claims
 - That does not mean that cases were improperly charged
 - It means that there was an issue, and the jury decided that the State failed to prove its case
- Some characterize these bills as impacting a person's right to bear arms...
 - This is not a gun issue – it doesn't change when people can carry guns
 - This is a self-defense issue – when can you use deadly force – be it a gun, a baseball bat, a car, a knife, your hands – to protect yourself or another and potentially take someone's life
- Current law works well
 - Please vote ITL

Johnston, Judith

From: Gaylie Blake [jerryngaylie@comcast.net]

Sent: Sunday, April 10, 2011 2:04 PM

To: Johnston, Judith

Subject: SB 88

Dear Ms. Johnston: We request that you would deliver this message to the members of the House Criminal Justice and Public Safety Committee prior to their meeting on April 12th concerning SB 88 (Castle Doctrine Bill).

Please urge the members of the committee who represent the citizens of New Hampshire, to support the bill as it now reads as introduced by Senator David Boutin (R16).

As lifetime residents of New Hampshire, and gun owners for many years (at least 65 years), we are responsible for our actions and feel this bill will strengthen our self defense standards. Criminals will have guns regardless of our laws and will not hesitate to use them. We should have the legal right to use our guns for self defense without recrimination. Thank you for honoring our request and thank you to the committee for listening. Sincerely, Jerome and Gaylie Blake, Alstead, NH 03602 Phone 603-835-6735 e-mail: jerryngaylie@comcast.net

Voting Sheets

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on SB 88

BILL TITLE: (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

DATE: May 17, 2011

LOB ROOM: 204

Amendments:

Sponsor: Rep. Kyle Tasker

OLS Document #: 2011 1969h

Sponsor: Rep. Alfred Baldasaro

OLS Document #:

Sponsor: Rep.

OLS Document #:

Ward

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Kyle Tasker

Seconded by Rep. Alfred Baldasaro

Vote: 11-3 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Kenneth Kreis

Seconded by Rep. Kyle Tasker

Vote: 11-3 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Gene Charron, Clerk
Rep. Dennis H. Fields, Acting Clerk

Dennis H. Fields

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on SB 88

BILL TITLE: (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

DATE: 5/17/2011

LOB ROOM: 204

Amendments:

Sponsor: Rep. TOSHER

OLS Document #: 2011-1969H

Sponsor: Rep. BOLDOSSORO

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTPIA, ITL, Interim Study (Please circle one.)
DRAFT 2011-1969H.

Moved by Rep. TOSHER

Seconded by Rep. BOLDOSSORO

14 YEARS 3 DAYS.

Vote: (Please attach record of roll call vote.)

Motions: OTP, OTPIA, ITL, Interim Study (Please circle one.)
DRAFT 2011-1969H

Moved by Rep. KREIS

Seconded by Rep. TOSHER

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: {Type VOTE}

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Gene Charron, Clerk

DEPUTY CLERK
DORRIS R. FIELDS

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: SB88

Title: (new title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

PH Date: 04 / 12 / 11

Exec Session Date: 5 / 17 / 2011

Motion: as amended Kreis TDSHob. ^{SECOND}

Amendment #: 2011 - 1969H

MEMBER	YEAS	NAYS
Swinford, Elaine B, Chairman	/	
Gagne, Larry G, V Chairman	/	
Welch, David A	/	
Fields, Dennis H	/	
Fesh, Robert M	/	
Charron, Gene P		
Villeneuve, Moe		
Antosz, Jason P	/	
Greazzo, Phil J		
Kreis, Kenneth	/	
Parsons, Robbie L	/	
Tasker, Kyle J	/	
Warden, Mark		
Pantelakos, Laura C		/
Berube, Roger R		
Shurtleff, Stephen J		/
Ginsburg, Philip E		/
<i>Balderson</i>	/	
<i>Balderson</i>	/	
18 YEAS		3 NAYS

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: SB 88 Title: RELATIVE TO PHYSICAL FORCE IN DEFENSE OF A PERSON AND RELATIVE TO THE BRANDISHING OF A FIREARM OR OTHER WEAPONS OF SELF-DEFENSE.
 PH Date: 04 / 12 / 11 Exec Session Date: 5 / 17 / 2011

Motion: OTP Tasker ^{2nd} Second ^{BOLDOGARD} Amendment #: Roll = 1969 H.

MEMBER	YEAS	NAYS
Swinford, Elaine B, Chairman	/	
Gagne, Larry G, V Chairman	/	
Welch, David A	/	
Fields, Dennis H	/	
Fesh, Robert M	/	
Charron, Gene P		
Villeneuve, Moe		
Antosz, Jason P	/	
Greazzo, Phil J		
Kreis, Kenneth	/	
Parsons, Robbie L	/	
Tasker, Kyle J	/	
Warden, Mark		
Pantelakos, Laura C		/
Berube, Roger R		
Shurtleff, Stephen J		/
Ginsburg, Philip E		/
<u>BOLDOGARD</u> <u>Blaugher Beckler</u>	/	
	<u>11 yeas</u>	<u>NAYS</u>

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on SB 88 (2)

BILL TITLE: (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

DATE: May 24, 2011

LOB ROOM: 204

Amendments:

Sponsor: Rep. Elaine Swinford OLS Document #: 2011 2031h

Sponsor: Rep. Kenneth Kreis OLS Document #:

Sponsor: Rep. David Welch OLS Document #:

Deleted Section 2 and 4 removed Page 1 20-28
Deleted Lines 8-23 Page 2 Yays 12-0 – Nay,

NEW AMENDMENT # 2011-02156H

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Kenneth Kreis

Seconded by Rep. Larry Gagne

Vote: 9-3 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Gene Charron, Clerk
Rep. Dennis Fields, Acting Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on SB 88 (2)

BILL TITLE: (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

DATE: May 24, 2011

LOB ROOM: 204

Amendments:

Sponsor: Rep. Elaine Swinford OLS Document #: 2011 2031h

Sponsor: Rep. Kenneth Kreis OLS Document #:

Sponsor: Rep. David Welch OLS Document #:

Deleted Section 2 and 4 removed Page 1 20-28
Deleted Lines 8-23 Page 2 Yays 12-0 – Nay,

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Kenneth Kreis

Seconded by Rep. Larry Gagne

Vote: 9-3 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Gene Charron, Clerk
Rep. Dennis Fields, Acting Clerk



HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on SB 88 (2)

BILL TITLE: (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

DATE: May 24, 2011

LOB ROOM: 204

Amendments:

Sponsor: Rep. *CUNIFFORD*

OLS Document #: *2011-2031H*

Sponsor: Rep. *KNEIS*

OLS Document #:

Sponsor: Rep. *WELCH*

OLS Document #:

Deleted
Deleted
5-17 2 QND 4 20110702 P 20-28
LINES 8-23 Page 2 4/12-0 NAY
Motions: OTP(OTP/A) ITL, Interim Study (Please circle one.)

Moved by Rep. *KNEIS*

Seconded by Rep. *CACRE*

Vote: (Please attach record of roll call vote.)

940AS D NAY

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Gene Charron, Clerk

ACTING CLERK DONNISHA FIELDS.

Gene Charron

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: SB 88 Title: (new title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.
 PH Date: 4 / 12 / 11 Exec Session Date: 5 / 24 / 2011

Motion: RECONSIDER BY VOTE OF MR. SHURTLEFF Amendment #: _____

MEMBER	YEAS	NAYS
Swinford, Elaine B, Chairman	/	
Gagne, Larry G, V Chairman	/	
Welch, David A	/	
Fields, Dennis H	/	
Fesh, Robert M		
Charron, Gene P		
Villeneuve, Moe	/	
Antosz, Jason P	/	
Greazzo, Phil J		
Kreis, Kenneth	/	
Parsons, Robbie L	/	
Tasker, Kyle J		
Warden, Mark	/	
Pantelakos, Laura C		
Berube, Roger R	/	
Shurtleff, Stephen J	/	
Ginsburg, Philip E	/	
<u>12 yeas</u>		<u>0 nays</u>
TOTAL VOTE:		

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: SB88

Title: (new title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

PH Date: 4/12/11

Exec Session Date: 5/24/2011

Motion: ^{PH} RESUB OTP Sec 8A.01A

Amendment #: 2011-203/H

MEMBER <i>9-11-10 No 1 20-28 Relate P&C 8-23</i>	YEAS	NAYS
Swinford, Elaine B, Chairman	/	
Gagne, Larry G, V Chairman	/	
Welch, David A	/	
Fields, Dennis H	/	
Fesh, Robert M		
Charron, Gene P		
Villeneuve, Moe	/	
Antosz, Jason P	/	
Greazzo, Phil J		
Kreis, Kenneth	/	
Parsons, Robbie L	/	
Tasker, Kyle J		
Warden, Mark	/	
Pantelakos, Laura C		
Berube, Roger R	/	
Shurtleff, Stephen J	/	
Ginsburg, Philip E	/	
	12 yeas	0 NAYS

(3)

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: SB 88 Title: RELATIVE TO PHYSICAL FORCE IN DEFENSE OF PERSON AND
RELATIVE TO THE BRIBING OF A JUDGE OR OTHER OFFICIALS OF SELF-DEFENSE.
 PH Date: 5/22/2011 Exec Session Date: 5/24/2011

Motion: DTP A Kreis 506 Gagne Amendment #: 2011-003141

MEMBER	YEAS	NAYS
Swinford, Elaine B, Chairman	/	
Gagne, Larry G, V Chairman	/	
Welch, David A	/	
Fields, Dennis H	/	
Fesh, Robert M		
Charron, Gene P		
Villeneuve, Moe	/	
Antosz, Jason P	/	
Greazzo, Phil J		
Kreis, Kenneth	/	
Parsons, Robbie L	/	
Tasker, Kyle J		
Warden, Mark	/	
Pantelakos, Laura C		
Berube, Roger R		/
Shurtleff, Stephen J		/
Ginsburg, Philip E		/
	9 YEAS	3 NAYS.

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: SB 88

Title: RELATIVE TO PHYSICAL FORCE IN DEFENSE OF A PERSON AND RELATIVE TO THE BRANDING OF A FIREARM OR OTHER MEANS OF SELF DEFENSE.

PH Date: 4 / 12 / 2011

Exec Session Date: 5 / 24 / 2011

Motion: Rep. Welch SPT 2 MIN 4 LINES R-29 ⁸⁰⁴⁰ ¹⁰⁰⁰² ⁸⁻²³ Amendment #: 2011-2031H

MEMBER ^{see SPURLOCK}

YEAS

NAYS

Swinford, Elaine B, Chairman

Gagne, Larry G, V Chairman

Welch, David A

Fields, Dennis H

Fesh, Robert M

Charron, Gene P

Villeneuve, Moe

Antosz, Jason P

Greazzo, Phil J

Kreis, Kenneth

Parsons, Robbie L

Tasker, Kyle J

Warden, Mark

Pantelakos, Laura C

Berube, Roger R

Shurtleff, Stephen J

Ginsburg, Philip E

House Vote

12 YEAS

0 NAYS

TOTAL VOTE:

Printed: 1/4/2011

Committee Report

SB 88 (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

MAJORITY REPORT

This bill allows a person who is anywhere he or she has a right to be to use deadly force to protect oneself or a third person. Provides that a person, unless prohibited by statute who is anywhere they have a right to be and/or displays or brandishes a firearm or other means of self-defense to warn off a threat shall not be guilty of criminal threatening. Permits persons who meet the requirement established in RSA 159:4 to carry a firearm openly or concealed, loaded or not, in a vehicle. Removes, under certain circumstances, the requirement that a non-resident obtain a license to possess a firearm in New Hampshire includes a civil immunity provision.

Rep. Kenneth Kreis for the Majority
For the Committee
OTP/A <2011-1969h> 11-3

Void

COMMITTEE REPORT

COMMITTEE: Criminal Justice and Public Safety

BILL NUMBER: SB88

TITLE: (new title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

DATE: 5/17/2011 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No. <u>2011-1969H</u>

STATEMENT OF INTENT:

SB 88 allows a person who is anywhere he or she has a right to be to use deadly force to protect oneself or a third person. Provides that a person unless prohibited by statute who is anywhere they have a right to be and/or displays or brandishes a firearm or other means of self defense to warn off a threat shall not be guilty of criminal threatening. Permits persons who meet the requirement set in RSA 159:4 to carry a firearm openly or concealed loaded or not in a vehicle. Provides under certain circumstances the requirement that one must obtain a license to possess a firearm in NH. Includes a civil immunity provision.

COMMITTEE VOTE: 11-3

RESPECTFULLY SUBMITTED,

Rep. Kendra Kus
For the Committee

- Copy to Committee Bill File
- Use Another Report for Minority Report

SB 88 (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

MINORITY REPORT

Void

This bill eliminates the requirement of a license to carry a concealed weapon. The minority has two concerns with this provision: (1) It removes the opportunity for licensing authorities to interact at regular intervals (4 yrs. currently) with gun owners to update their knowledge of the individual's state of mind, circumstances, legal status, etc. and (2) it removes a source of revenue for municipalities that constitutes a negligible imposition to licensees. This bill also expands the conditions in RSA 627:4, III, under which a person may use deadly force, or the threat of deadly force, to defend himself or a third person in a situation where he has good reason to fear that another person may use deadly force against either of them. Chapter 627 designates action under these conditions as a "complete defense" to any offense that would be considered unlawful in other circumstances. This bill also expands the actions in RSA 631:4, IV that a person may take to warn off a person threatening serious injury or death to include, in addition to the current displaying of a firearm or other means of self-defense, brandishing the firearm or other weapon. It specifies that this action is permissible anywhere (the person) has a right to be. The minority's concern here is primarily with new provisions under RSA 627:4, III. The existing law says deadly force in self-defense is justified and then lists exceptions. One exception occurs if the person can safely retreat from the encounter. The law then provides for an exception to this exception, involving the so-called "Castle doctrine". The law treats a person's dwelling as distinct from all other places, conferring special protection to the individual confronting an intruder: a person is not required to retreat within his dwelling or associated areas (cartilage"). This bill expands this exemption from the obligation to retreat to "anywhere a person has a right to be", putting every place, public or private, intimate or crowded, familiar or strange, in the same category as the sacred precincts of one's home. We are concerned that in expanding this special privilege (the exemption from the obligation to retreat if it is possible to do so safely) beyond the rightly sacrosanct boundaries of a person's home, the bill unnecessarily endangers public safety. The committee heard from

law enforcement officials and others that his provision would justify armed citizens in inserting themselves into confrontations in public places – on the street, say, or in a mall –involving law enforcement officers and dangerous armed persons, possibly with other members of the public as bystanders and witnesses. Such scenes are notoriously difficult to analyze quickly; law enforcement officers are trained to distinguish dangerous persons from others, to deal with potential hostage situations and to take control of complex scenarios in such a way as to minimize harm to innocent parties. The unnecessary invitation in SB 88 to untrained amateurs with firearms to insert themselves into such situations can only endanger public safety by adding to the complexity of the scene, this compromising law enforcement officers' ability to manage a threatening person while securing the safety of members of the public. For this reason the minority opposes SB 88 and recommends a vote of Inexpedient to Legislate.

Rep. Philip E. Ginsburg
For the Committee
ITL 11-3 RC

SB 88: Minority opinion: Submitted by Rep. Phil Ginsburg

^{also}
Rep. Phil Ginsburg for the ~~minority~~ of the Committee on Criminal Justice and Public Safety. SB 88 expands the conditions in RSA 627:4, III, under which a person may use deadly force, or the threat of deadly force, to defend himself or a third person in a situation where he has good reason to fear that another person may use deadly force against either of them. ~~(It also modifies the pronouns in the law to cover both male and female actors; for the sake of simplicity we will adhere in this note to the traditional practice of using the male pronoun to represent both sexes.)~~ Ch. 627 designates action under these conditions as a "complete defense" to any offense that would be considered unlawful in other circumstances.

SB 88 also expands the actions in RSA 631:4, IV that a person may take to warn off a person threatening serious injury or death to include, in addition to the current displaying of a firearm or other means of self-defense, *brandishing* the firearm or other weapon. It specifies that this action is permissible *anywhere [the person] has a right to be.*

~~The bill has two other primary provisions. It defines "the act of producing or displaying a weapon" as "non-deadly force," and it removes mandatory minimum sentences for first (3 years) and second (6 years) felony offenses involving a deadly weapon.~~

^{here}
The minority's concern is primarily with new provisions under RSA 627:4, III. The existing law says deadly force in self-defense is justified and then lists exceptions. One exception occurs if the person can safely retreat from the encounter. The law then provides for an exception to this exception, involving the so-called "Castle doctrine." The law treats a person's dwelling as distinct from all other places, conferring special protection to the individual confronting an intruder: a person is not required to retreat within his dwelling or associated areas ("curtilage").

SB 88 expands this exemption from the obligation to retreat to ^{where} ~~"any place where [a person] has a right to be, or reasonably believed he or she had a right to be"~~ putting every place, public or private, intimate or crowded, familiar or strange, in the same category as the sacred precincts of one's own home. We are concerned that in expanding this special privilege (the exemption from the obligation to retreat if it is possible to do so safely) beyond the rightly sacrosanct boundaries of a person's home, the bill unnecessarily endangers public safety. The Committee heard from law enforcement officials and others that this provision would justify armed citizens in inserting themselves into confrontations in public places – on the street, say, or in a mall -- involving law enforcement officers and dangerous armed persons, possibly with other members of the public as bystanders and witnesses. Such scenes are notoriously difficult to analyze quickly; law enforcement officers are trained to distinguish dangerous persons from others, to deal with potential hostage situations, and to take control of complex scenarios in such a way as to minimize harm to innocent parties.

The unnecessary invitation in SB 88 to untrained amateurs with firearms ~~or other deadly weapons~~ to insert themselves into such situations can only endanger public safety by adding to the complexity of the scene, thus compromising law enforcement officers' ability to manage a threatening person while securing the safety of members of the public. For this reason the minority opposes SB 88 and recommends a vote of Inexpedient to Legislate.

MINORITY REPORT

COMMITTEE: Criminal Justice and Public Safety
BILL NUMBER: SB 88
TITLE: relative to physical force in defense of a person, brandishing a firearm or other means.
DATE: 5/17/11 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
 OUGHT TO PASS W/ AMENDMENT
 INEXPEDIENT TO LEGISLATE
 RETAINED
 INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.
2011-1969H

STATEMENT OF INTENT:

SB 88 eliminates the requirement of a license to carry a concealed weapon. The minority has two concerns with this provision: (1) it removes the opportunity for licensing authorities to interact at regular intervals (4 yrs. currently) with gun owners to update their knowledge of the individual's state of mind, circumstances, legal status, etc., and (2) it removes a source of revenue for municipalities that constitutes a negligible imposition to licensees.
[SB 88 also expands the conditions.]

COMMITTEE VOTE: 3-3

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. [Signature]
For the Committee

REGULAR CALENDAR

June 1, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Majority of the Committee on CRIMINAL JUSTICE
AND PUBLIC SAFETY to which was referred SB88,**

**AN ACT (New Title) relative to physical force in defense
of a person and relative to the brandishing of a firearm
or other means of self-defense. Having considered the
same, report the same with the following amendment,
and the recommendation that the bill OUGHT TO PASS
WITH AMENDMENT.**

Rep. Kenneth Kreis

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee: **CRIMINAL JUSTICE AND PUBLIC SAFETY**
Bill Number: **SB88**
Title: **(New Title) relative to physical force in defense
of a person and relative to the brandishing of a
firearm or other means of self-defense.**
Date: **May 24, 2011**
Consent Calendar: **NO**
Recommendation: **OUGHT TO PASS WITH AMENDMENT**

STATEMENT OF INTENT

This bill allows a person who is anywhere he or she has a right to be to use deadly force to protect oneself or a third person. Provides that a person, unless prohibited by statute who is anywhere they have a right to be and permits persons who meet the requirement established in RSA 159:4 to carry a firearm openly or concealed, loaded or not in a vehicle. Includes a civil immunity provision

Vote 9-3

Rep. Kenneth Kreis
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

CRIMINAL JUSTICE AND PUBLIC SAFETY

SB88, (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense. OUGHT TO PASS WITH AMENDMENT.

Rep. Kenneth Kreis for the **Majority** of **CRIMINAL JUSTICE AND PUBLIC SAFETY**. This bill allows a person who is anywhere he or she has a right to be to use deadly force to protect oneself or a third person. Provides that a person, unless prohibited by statute who is anywhere they have a right to be and permits persons who meet the requirement established in RSA 159:4 to carry a firearm openly or concealed, loaded or not in a vehicle. Includes a civil immunity provision **Vote 9-3.**

Original: House Clerk
Cc: Committee Bill File

SB 88 (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

Majority Report

This bill allows a person who is anywhere he or she has a right to be to use deadly force to protect oneself or a third person. Provides that a person, unless prohibited by statute who is anywhere they have a right to be and permits persons who meet the requirement established in RSA 159:4 to carry a firearm openly or concealed, loaded or not in a vehicle. Includes a civil immunity provision.

Rep. Kenneth Kreis
For the Committee
OTP/A <2011-2156h> 9-3

Rep. Elaine Swenford

COMMITTEE REPORT

COMMITTEE: Criminal Justice and Public Safety

BILL NUMBER: SB 88

TITLE: (new title) relative to physical force in defense of person and relative to the brandishing of a firearm or other means of self-defense.

DATE: May 24, 2011 CONSENT CALENDAR: YES NO Reg Cal

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No. 2011-2156h 211-2031H
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STATEMENT OF INTENT:

This bill allows a person who is anywhere
where she has a right to be to use deadly force
to protect oneself or a 3rd person. Provides
that a person, unless prohibited by statute who is
anywhere they have a right to be and for displays
permits persons who meet the requirement
established in RSA 159:4 to carry a firearm openly
or concealed, loaded or not in a vehicle. Includes
a civil immunity provision

COMMITTEE VOTE: yeas 9-3 nays

RESPECTFULLY SUBMITTED,

Rep. Ronald H. Sr.
For the Committee

<ul style="list-style-type: none"> • Copy to Committee Bill File • Use Another Report for Minority Report

REGULAR CALENDAR

June 1, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on CRIMINAL JUSTICE
AND PUBLIC SAFETY to which was referred SB88,

AN ACT (New Title) relative to physical force in defense
of a person and relative to the brandishing of a firearm
or other means of self-defense. Having considered the
same, and being unable to agree with the Majority,
report with the following Resolution: RESOLVED, That
it is INEXPEDIENT TO LEGISLATE.

Rep. Philip E Ginsburg

FOR THE MINORITY OF THE COMMITTEE

MINORITY COMMITTEE REPORT

Committee: **CRIMINAL JUSTICE AND PUBLIC SAFETY**
Bill Number: **SB88**
Title: **(New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.**
Date: **May 24, 2011**
Consent Calendar: **NO**
Recommendation: **INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

This bill makes several changes in the laws related to the citizen's right to self-defense and licensing to carry firearms. The minority is concerned primarily with two elements of the bill. This bill expands the conditions in RSA 627:4, III, under which a person may use deadly force to defend himself, or a third person against a person he fears may use deadly force against either of them. Chapter 627 designates action under these conditions as a "complete defense" to any offense that would be considered unlawful in other circumstances. The minority's concern is primarily with new provisions under RSA 627:4, III. The existing law says deadly force in self-defense is justified and then lists exceptions. One exception occurs if the person can safely retreat from the encounter. The law then provides for an exception, involving the so-called "Castle Doctrine". The law treats a person's dwelling as distinct from all other places, conferring special protection to the individual confronting an intruder: a person is not required to retreat within his dwelling or associated areas ("curtilage"). This bill expands this exemption from the obligation to retreat to "anywhere [a person] has a right to be", treating every place, public or private, as if it were equal to the sacred precincts of one's home. We are concerned that in expanding this special privilege beyond the rightly sacrosanct boundaries of the home, the bill unnecessarily endangers public safety. The invitation to untrained amateurs with firearms or other deadly weapons to insert themselves into a situation where they have no knowledge of prior events or the individuals involved can only endanger public safety by adding to the complexity of the scene, thus compromising the ability of law enforcement officers or others involved to manage a threatening person while securing the safety of members of the public. This bill also eliminates the requirement of a license to carry a concealed weapon. The minority opposes this provision for three reasons: 1) It removes the useful opportunity for licensing authorities to observe applicants at regular intervals (now four years, five years under SB 88) to check for any changes in legal status or personal circumstances that might affect their suitability to carry

Original: House Clerk
Cc: Committee Bill File

a concealed weapon; 2) it eliminates a source of income for municipalities that places a very small burden on those paying the fees; and 3) it eliminates a useful tool for law enforcement personnel investigating public disturbances involving armed persons, where they may use possession of a license to distinguish between law-abiding citizens and others. For these reasons, the minority opposes SB 88 and recommends a vote of Inexpedient to Legislate.

Rep. Philip E Ginsburg
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

CRIMINAL JUSTICE AND PUBLIC SAFETY

SB88, (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense. **INEXPEDIENT TO LEGISLATE.**

Rep. Philip E Ginsburg for the **Minority** of CRIMINAL JUSTICE AND PUBLIC SAFETY. This bill makes several changes in the laws related to the citizen's right to self-defense and licensing to carry firearms. The minority is concerned primarily with two elements of the bill. This bill expands the conditions in RSA 627:4, III, under which a person may use deadly force to defend himself, or a third person against a person he fears may use deadly force against either of them. Chapter 627 designates action under these conditions as a "complete defense" to any offense that would be considered unlawful in other circumstances. The minority's concern is primarily with new provisions under RSA 627:4, III. The existing law says deadly force in self-defense is justified and then lists exceptions. One exception occurs if the person can safely retreat from the encounter. The law then provides for an exception, involving the so-called "Castle Doctrine". The law treats a person's dwelling as distinct from all other places, conferring special protection to the individual confronting an intruder: a person is not required to retreat within his dwelling or associated areas ("curtilage"). This bill expands this exemption from the obligation to retreat to "anywhere [a person] has a right to be", treating every place, public or private, as if it were equal to the sacred precincts of one's home. We are concerned that in expanding this special privilege beyond the rightly sacrosanct boundaries of the home, the bill unnecessarily endangers public safety. The invitation to untrained amateurs with firearms or other deadly weapons to insert themselves into a situation where they have no knowledge of prior events or the individuals involved can only endanger public safety by adding to the complexity of the scene, thus compromising the ability of law enforcement officers or others involved to manage a threatening person while securing the safety of members of the public. This bill also eliminates the requirement of a license to carry a concealed weapon. The minority opposes this provision for three reasons: 1) It removes the useful opportunity for licensing authorities to observe applicants at regular intervals (now four years, five years under SB 88) to check for any changes in legal status or personal circumstances that might affect their suitability to carry a concealed weapon; 2) it eliminates a source of income for municipalities that places a very small burden on those paying the fees; and 3) it eliminates a useful tool for law enforcement personnel investigating public disturbances involving armed persons, where they may use possession of a license to distinguish between law-abiding citizens and others. For these reasons, the minority opposes SB 88 and recommends a vote of Inexpedient to Legislate.

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SB 88 (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

Minority Report

This bill makes several changes in the laws related to the citizen's right to self-defense and licensing to carry firearms. The minority is concerned primarily with two elements of the bill. This bill expands the conditions in RSA 627:4, III, under which a person may use deadly force to defend himself, or a third person against a person he fears may use deadly force against either of them. Chapter 627 designates action under these conditions as a "complete defense" to any offense that would be considered unlawful in other circumstances. The minority's concern is primarily with new provisions under RSA 627:4, III. The existing law says deadly force in self-defense is justified and then lists exceptions. One exception occurs if the person can safely retreat from the encounter. The law then provides for an exception, involving the so-called "Castle Doctrine". The law treats a person's dwelling as distinct from all other places, conferring special protection to the individual confronting an intruder: a person is not required to retreat within his dwelling or associated areas ("curtilage"). This bill expands this exemption from the obligation to retreat to "anywhere [a person] has a right to be", treating every place, public or private, as if it were equal to the sacred precincts of one's home. We are concerned that in expanding this special privilege beyond the rightly sacrosanct boundaries of the home, the bill unnecessarily endangers public safety. The invitation to untrained amateurs with firearms or other deadly weapons to insert themselves into a situation where they have no knowledge of prior events or the individuals involved can only endanger public safety by adding to the complexity of the scene, thus compromising the ability of law enforcement officers or others involved to manage a threatening person while securing the safety of members of the public. This bill also eliminates the requirement of a license to carry a concealed weapon. The minority opposes this provision for three reasons: 1) It removes the useful opportunity for licensing authorities to observe applicants at regular intervals (now four years, five years under SB 88) to check for any changes in legal status or personal circumstances that might affect their suitability to carry a concealed weapon; 2) it eliminates a source of income for municipalities that places a very small burden on those paying the fees; and 3) it eliminates a useful tool for law enforcement personnel investigating public disturbances involving armed persons, where

they may use possession of a license to distinguish between law-abiding citizens and others. For these reasons, the minority opposes SB 88 and recommends a vote of Inexpedient to Legislate.

Rep. Philip Ginsburg
For the Committee

Rep. Elaine Swenford

SB 88: Minority opinion: Submitted by Rep. Phil Ginsburg

Rep. Phil Ginsburg for the **minority** of the Committee on Criminal Justice and Public Safety: SB 88 makes several changes in the laws related to the citizen's right to self-defense and licensing to carry firearms. The minority is concerned primarily with two elements of the bill.

SB 88 expands the conditions in RSA 627:4, III, under which a person may use deadly force to defend himself or a third person against a person he fears may use deadly force against either of them. Ch. 627 designates action under these conditions as a "complete defense" to any offense that would be considered unlawful in other circumstances.

The minority's concern is primarily with new provisions under RSA 627:4, III. The existing law says deadly force in self-defense is justified and then lists exceptions. One exception occurs if the person can safely retreat from the encounter. The law then provides for an exception to this exception, involving the so-called "Castle doctrine." The law treats a person's dwelling as distinct from all other places, conferring special protection to the individual confronting an intruder: a person is not required to retreat within his dwelling or associated areas ("curtilage").

SB 88 expands this exemption from the obligation to retreat to "*anywhere [a person] has a right to be,*" treating every place, public or private, as if it were equal to the sacred precincts of one's own home. We are concerned that in expanding this special privilege beyond the rightly sacrosanct boundaries of the home, the bill unnecessarily endangers public safety. The invitation to untrained amateurs with firearms or other deadly weapons to insert themselves into a situation where they have no knowledge of prior events or the individuals involved can only endanger public safety by adding to the complexity of the scene, thus compromising the ability of law enforcement officers or others involved to manage a threatening person while securing the safety of members of the public.

SB 88 also eliminates the requirement of a license to carry a concealed weapon. The minority opposes this provision for three reasons: 1) It removes the useful opportunity for licensing authorities to observe applicants at regular intervals (now four years, five years under SB 88) to check for any changes in legal status or personal circumstances that might affect their suitability to carry a concealed weapon; 2) it eliminates a source of income for municipalities that places a very small burden on those paying the fees; and 3) it eliminates a useful tool for law enforcement personnel investigating public disturbances involving armed persons, where they may use possession of a license to distinguish between law-abiding citizens and others.

For these reasons the minority opposes SB 88 and recommends a vote of Inexpedient to Legislate.

Rep. Elaine Swenson

MINORITY REPORT

COMMITTEE: Criminal Justice and Public Safety

BILL NUMBER: SB 88

TITLE: (New Title) relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

DATE: _____ CONSENT CALENDAR: YES NO Reg Cal

OUGHT TO PASS

? OUGHT TO PASS W/ AMENDMENT

INEXPEDIENT TO LEGISLATE

INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.
2011-2012 H.

STATEMENT OF INTENT:

(Please see attached)

COMMITTEE VOTE: 9 yeas 3 nays

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RESPECTFULLY SUBMITTED,
Phil Ginsburg
Rep. Phil Ginsburg
For the Minority