

Bill as Introduced

SB 88 - AS INTRODUCED

2011 SESSION

11-0341

04/09

SENATE BILL 88

AN ACT relative to physical force in defense of a person.

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

ANALYSIS

This bill removes a person's duty to retreat from an encounter involving deadly force. The bill provides that a person is justified in using deadly force on another to defend oneself from the use of deadly force.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to physical force in defense of a person.

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 ~~(c)~~ (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.

SB 88 – VERSION ADOPTED BY BOTH BODIES

03/30/11 1310s
1June2011... 2156h
06/22/11 2487CofC

2011 SESSION

11-0341
04/09

SENATE BILL 88

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

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

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.

Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears ~~[in brackets and struck through.]~~
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SB 88 - VERSION ADOPTED BY BOTH BODIES

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

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

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 *or she* is not required to retreat if he *or*
6 *she* is within his *or her* dwelling [or], its curtilage, *or anywhere he or she has a right to be*, and
7 was not the initial aggressor; or

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

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

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

16 2 Sentences and Limitations. Amend RSA 651:2, II-g to read as follows:

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

26 3 New Section; Justification; Civil Immunity. Amend RSA 627 by inserting after section 1 the
27 following new section:

SB 88 - VERSION ADOPTED BY BOTH BODIES

- Page 2 -

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

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

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

12 5 Effective Date. This act shall take effect 60 days after its passage.

SB 88 - FINAL VERSION

03/30/11 1310s
1June2011... 2156h
06/22/11 2487CofC
06/22/11 2524EBA

2011 SESSION

11-0341
04/09

SENATE BILL 88

AN ACT relative to physical force in defense of a person, relative to producing or displaying a firearm or other means of self-defense, and relative to eliminating minimum sentencing and adding civil immunity for certain firearm use.

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

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.

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SB 88 - FINAL VERSION

03/30/11 1310s
1June2011... 2156h
06/22/11 2487CofC
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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, relative to producing or displaying a firearm or other means of self-defense, and relative to eliminating minimum sentencing and adding civil immunity for certain firearm use.

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 *or she* is not required to retreat if he *or*
6 *she* is within his *or her* dwelling [or], its curtilage, *or anywhere he or she has a right to be*, and
7 was not the initial aggressor; or

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

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

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

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

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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 4 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 5 Effective Date. This act shall take effect 60 days after its passage.

14 VETOED: July 13, 2011

Amendments

Sen. Houde, Dist. 5
March 22, 2011
2011-1130s
04/09

Amendment to SB 88

1 Amend the bill by replacing section 1 with the following:

2

3 1 Physical Force in Defense of Person. Amend RSA 627:4, III to read as follows:

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

7 (a) Retreat from the encounter [~~except that he is not required to retreat if he is within~~
8 ~~his dwelling or its curtilage and~~] *if he or she* was [not] the initial aggressor; or

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

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

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

Amendment to SB 88

- Page 2 -

2011-1130s

AMENDED ANALYSIS

This bill requires that a person is not justified in using deadly force on another to defend oneself or a third person from deadly force if the person can retreat from the encounter and was the initial aggressor.

Senate Judiciary
March 24, 2011
2011-1222a
04/05

Amendment to SB 88

1 Amend the bill by inserting after section 1 the following and renumbering the original section 2 to
2 read as 3:

3

4 2 New Paragraph; Physical Force in Defense of a Person. Amend RSA 627:4 by inserting after
5 paragraph III the following new paragraph:

6 IV. A person is not justified in using deadly force on another to defend himself or herself or a
7 third person from deadly force that he or she provoked.

2011-1222s

AMENDED ANALYSIS

This bill removes a person's duty to retreat from an encounter involving deadly force. The bill also 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.

Committee Minutes

**SENATE CALENDAR NOTICE
JUDICIARY**

Senator Matthew Houde Chairman
 Senator Sharon Carson V Chairman
 Senator Fenton Groen
 Senator Jim Luther

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

Date: March 3, 2011

HEARINGS

Thursday

3/10/2011

JUDICIARY

LOB 101

1:00 PM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

1:00 PM SB14-FN ✓
 1:30 PM SB88 ✓

relative to the brandishing of a firearm.
 relative to physical force in defense of a person.

Sponsors:

SB14-FN
 Sen. Tom De Blois
SB88
 Sen. David Boutin
 Sen. John Barnes, Jr.
 Sen. Tom De Blois
 Sen. Gary Lambert

Sen. Jeb Bradley

Rep. Alfred Baldasaro
 Sen. Jeb Bradley
 Sen. James Forsythe
 Sen. Jim Luther

Rep. Jennifer Coffey
 Sen. Sharon Carson
 Sen. John Gallus
 Sen. Raymond White

Rep. Elaine Swinford
 Sen. Peter Bragdon
 Sen. Fenton Groen

Judiciary Committee

Hearing Report

TO: Members of the Senate

FROM: Susan Duncan, Senior Legislative Aide

RE: Hearing report on SB 88 – relative to physical force in defense of a person.

HEARING DATE: March 10, 2011

MEMBERS OF THE COMMITTEE PRESENT: Senators Houde, Carson, Groen and Luther

MEMBERS OF THE COMMITTEE ABSENT: No one

Sponsor(s): Senators Boutin, Barnes, Bradley, Carson, Bragdon, De Blois, Forsythe, Gallus, Groen, Lambert, Luther and White; Representatives Baldasaro, Coffey and Swinford

What the bill does: This bill removes a person's duty to retreat from an encounter involving deadly force. The bill provides that a person is justified in using deadly force on another to defend oneself from the use of deadly force.

Who supports the bill: Senator Boutin; Senator Carson; Senator White; Senator Gallus; Senator De Blois; Representative Coffey; Representative Welch; Representative Cunningham; Representative Baldasaro; Attorney Evan Nappen, representing PGNH

Who opposes the bill: Attorney Ann Rice, NH Dept. of Justice; Chief David Goldstein of Franklin on behalf of the NH Chiefs Association;

Others testifying: Assistant Commissioner Earl Sweeney; Dept. of Safety; Scott Sweet representing the NH State Police (signed in to testify but had to leave before we got to him)

Summary of testimony received:

- **Senator Houde** opened the hearing at 1:30 p.m.
- **Senator Boutin** introduced the legislation and explained that it has to do with physical force in defense of a person – and not about an attempt to define non-deadly force – and not about the Ward Bird case. He said that this is not a gun bill but a self-defense bill.

- He said that he did not introduce it on behalf of any gun group but did it on his own.
- He explained that self-defense is defined in RSA 627. He outlined the provisions of 627 by various section including justifiable defense against any unlawful force; police officers are exempted; competing harms and what is necessary to avoid harm; what happens if you provoke harm – you would not be covered under this bill; section 4 is where we get to this bill.
- Unlawful deadly force is the first section – and needs to be addressed at some future date.
- The second piece of 627: 4, deals with justifiable deadly force and duty to retreat. He explained that there is an exemption that you have no duty to retreat if you are in your home or curtilage (immediate area surrounding the home).
- He explained that we have the Castle Doctrine in our state.
- He said that we are essentially extending the self-defense provision to the additional concept of anywhere.
- This extends to anyone who is attacked in any place where they have a right to be: your vehicle, your home, etc.
- He explained that this means that you can stand your ground reasonably.
- There are currently three tests applied to ascertain reasonable use of force: fear of death, serious bodily harm or forcible sexual penetration.
- He explained that it really is a very simple bill and that by adopting it, New Hampshire would join 31 other states and enable citizens to defend themselves against unlawful force.
- **Representative Steve Cunningham** testified in support and explained that as a young man, he thought the duty to retreat made sense – but that as he ages, his knees don't work as well and he can no longer retreat. He said that while retreating may be reasonable, it may not always be possible.
- **Representative Al Baldasaro** testified in support and explained some of the points made previously by Senator Boutin. He said that he knows what it is like to stand his ground and told of situations he had experienced previously. He said that it is our responsibility as Americans to not turn our backs.
- **Attorney Ann Rice** appeared in opposition. She explained that New Hampshire already has a well-defined law on self-defense and deadly force and said that there is a delicate balance. She said that there are three situations where you can use deadly force: four specific circumstances, and three apply wherever you might be – the fourth in your home and that the law is more permissive in your home because we recognize your right to your home and privacy.

- Three circumstances where you can use deadly force: where you believe that someone is about to use deadly force against you; where you believe someone is about to use unlawful force against you (i.e., a burglary); and where the person is about to commit a kidnapping or sexual offense. You would be permitted to use deadly force but only if safe retreat is not an option. She said that the retreat must be in complete safety and went on to discuss the duty to retreat versus the sanctity of human life . . . and that deadly force is a last resort. She said that this does not exist in your home because this is where you have the greatest sanctity. She also noted that it is very difficult to prove that you could not retreat safely – that the state must disprove that they did not act. She explained that the presumption is that you did act appropriately.
- **Attorney Rice** explained that her office investigates all homicides and that one or two times each year that must make this determination. She said that right now, the law is very carefully balanced and is working quite well. She said that this is not a problem and asked the Committee to please kill this legislation.
- **Senator Luther** asked about the code on the specific wording on the burden of proof. Attorney Rice said that she would be glad to get this.
- **Senator Groen** asked if this would place a question in the mind of the person being assaulted – would the person be at a legal disadvantage if they have to sit there and try to figure out whether they are safe to retreat or not. He asked if this doesn't put the burden of proof on the person. **Attorney Rice** responded that perhaps we're talking about two different things but that the person must make that determination as to whether they can safely retreat or not. She said that if someone is charged then the burden would be on the state to prove.
- **Senator Groen** followed up responding to her comment about the sanctity of life and said that he agrees with her fully – but if someone is an aggressor, are they not putting themselves in jeopardy. **Attorney Rice** responded that one of the things being deleted from current statute in this legislation relative to the initial aggressor should not be removed. She said that the law does is to recognize that they will deal with the aggressor and allows the law to intervene and deal with people who are acting criminally.
- **Senator Carson** remarked that it seems that the time is lost when the person is trying to make a determination as to whether they can retreat and asked if they aren't losing previous time. She said that she believes one's first inclination is to respond and fight back. She agreed that one is supposed to be safe at home, but asked what if you're out walking on your property. **Attorney Rice** responded that this does not apply when someone is in their home or curtilage.

- **Senator Carson** asked about the person who has a 100 acre farm and they are attacked in a field. **Attorney Rice** responded that curtilage is the area commonly used for living purposes such as the front yard and drive way. **Attorney Lehmann** clarified that there is no differentiation on the “back forty acres.”
- **Senator Luther** asked about acting in self defense, that the individual was not trying to kill the other person. **Attorney Rice** responded that this applies when using deadly force. She said if deadly force is not being used, then the individual does not have to retreat.
- **Senator Luther** commented that he is concerned about the timeframe here – and that we are losing precious seconds. **Attorney Rice** stated that she agrees with Senator Luther and that this is taken into account. She said that it is supposed to be a split-second decision – and that obviously it has to be. She said that the prosecutors take this into account when making the determination as to whether to charge someone or not.
- **Senator Carson** commented about women who take self-defense courses and how they must work to overcome the instinct to not hurt someone. She said that she gets concerned when she hears that she cannot protect herself.
- **Assistant Commissioner Sweeney** testified that he tends to agree with the Attorney General that our law works very well the way it currently is and that it is important to be as carefully conservative as possible. He noted that in the Ward Bird case, this was a good example of legislation that had not been carefully thought out.
- He asked that the language be put back in regarding the initial aggressor or clarifying that the person had a criminal intent.
- He distributed materials for consideration by the committee.
- **Chief David Goldstein** testified on behalf of the Police Chiefs Association in opposition to the legislation. He said that he concurs with Attorney General Rice that our statutes are quite adequate here and asked the Committee to please find the bill “inexpedient to legislate.”
- **Senator Luther** asked the Chief if he has specific concerns. **Chief Goldstein** responded that our existing law already covers these situations. He agreed that there are very fine lines in play with these statutes and he totally understands the physical limitations as we age. He said that he has been in uniform for 32 years now and that he understands that it is incumbent on him to prove self-defense did not exist. He said that they also understand that the person is required to show what happened in that specific moment.
- **Senator Groen** asked if he has had any situations where someone did retreat and subsequently lost in court. **Chief Goldstein** responded that over the years he has seen this just about every possible way – but he didn’t specifically recall if someone has been prosecuted.

- He said that he has seen people retreat. **Senator Houde** asked that if something IS going to change **Chief Goldstein** responded that he could only speak for himself, and not for the Chiefs.
- **Attorney Evan Nappen** spoke on behalf of Pro Gun NH and explained that the focus of his practice is weapons, firearms and self-defense. He noted that it could be argued that New Hampshire already has the Castle Doctrine. He said that if we adopted the language proposed by Assistant Commissioner Sweeney, this section would take away your right to use deadly force.
- **Attorney Nappen** said that curtilage in 627 includes lands or grounds surrounding your home that are used for domestic purposes.
- In discussing the "burden of proof," he commented that there is the practical burden but also the legal burden and noted that it is not automatic that self-defense is disproven by the state.
- He said that initially it is on the defendant to put in why he feels they were acting in self-defense. He said that what they are seeking is to have this burden removed from the defendant and to say to the wrongdoer that law abiding citizens can defend themselves.
- **Representative Baldasaro** spoke a second time and explained that he had been in two shootings in Somerville, Massachusetts, in a restaurant. He said that even with the experience of twenty-two years as a Marine who is trained, that there were five rounds already shot. He said that he was concerned with someone trying to assume what was in his mind. He noted that in Massachusetts, he didn't have this right. He said that there is also a case right now in Londonderry where the "repo" man was coming to do a repossession, but the homeowner didn't know it was the repo man and the homeowner was subsequently arrested for protecting his own land.
- **Senator Houde** closed the hearing at 2:23 p.m.

Funding: No fiscal note is attached to the bill.

Future Action: The Committee took the bill under advisement.

sfd

[file: SB 88 report]

Date: March 14, 2011

Speakers

Testimony

Presented by
E. Sweeney

Department of Safety Comments on HB ____ SB 88 ____ as Introduced (x) as amended ()

[This bill removes the duty of a person to retreat if he or she can, before using deadly force.]

Under current law, a private citizen can use deadly force to defend him or herself or a third person from what reasonably appears to be the imminent use of deadly force, but only if he or she cannot retreat with complete safety from the encounter, but the person need not retreat if he or she is in their own dwelling or curtilage and was not the initial aggressor.

This bill removes the obligation to retreat and the language that provides that the person must not have been the initial aggressor.

The Department of Safety is concerned with the removal of the requirement that the person not be the initial aggressor. We believe this could even be construed to allow a criminal who is committing a crime to use deadly force to defend himself against a homeowner, a business person who was being robbed, or a police officer.

If the bill is passed, we recommend amending the language in RSA 627:4, III, by reinstating the struck out wording that says, "and was not the initial aggressor", so that the section as amended would read simply "(a) Retreat from the encounter if he or she was the initial aggressor."

Presented by
E. Sweeney

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COMMITTEE: Judiciary

ANALYSIS

This bill removes a person's duty to retreat from an encounter involving deadly force unless he or she was the initial aggressor. The bill provides that a person is justified in using deadly force on another to defend oneself from the use of deadly force.

Explanation: Matter added to current law appears in bold italics.

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

(a) ~~Retreat from the encounter in a situation where he or she was the initial aggressor; or~~

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Deleted: , except that he is not required to retreat if he is within his dwelling or its curtilage and
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(b)] Surrender property to a person asserting a claim of right thereto; or

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

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

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

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: March 24, 2011

THE COMMITTEE ON Judiciary

to which was referred Senate Bill 88

AN ACT relative to physical force in defense of a person.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 3-1

AMENDMENT # 1222s

Senator Jim Luther
For the Committee

Susan Duncan 271-8631

New Hampshire General Court - Bill Status System

Docket of SB88

Docket Abbreviations

Bill Title: (3rd New Title) relative to physical force in defense of a person, relative to producing or displaying a firearm or other means of self-defense, and relative to eliminating minimum sentencing and adding civil immunity for certain firearm use.

Official Docket of SB88:

Date	Body	Description
1/19/2011	S	Introduced and Referred to Judiciary, SJ 3 , Pg.35
3/3/2011	S	Hearing: 3/10/11, Room 101, LOB, 1:30 p.m.; SC14
3/24/2011	S	Committee Report: Ought to Pass with Amendment 1222s, 3/30/11; SC17
3/30/2011	S	Without Objection, President Bragdon moved to Special Order SB 88 to after lunch; SJ 11 , Pg.195
3/30/2011	S	Committee Report: Ought to Pass with Amendment #2011-1222s , 3/30/11
3/30/2011	S	Committee Amendment 1222s, AF, VV; SJ 11 , Pg.238
3/30/2011	S	Sen. De Blois Floor Amendment #2011-1310s , NT, AA, VV; SJ 11 , Pg.238
3/30/2011	S	Ought to Pass with Amendment 1310s, NT, RC 17Y-7N , MA; OT3rdg; SJ 11 , Pg.239
3/30/2011	S	Passed by Third Reading Resolution; SJ 11 , Pg.239
3/31/2011	H	Introduced and Referred to Criminal Justice and Public Safety; HJ 35 , PG.1241
4/5/2011	H	Public Hearing: 4/12/2011 1:00 PM LOB 204
4/7/2011	H	==CANCELLED== Executive Session: 4/14/2011 1:00 PM LOB 204
4/20/2011	H	Subcommittee Work Session: 4/21/2011 10:00 AM LOB 204
4/21/2011	H	Subcommittee Work Session: 4/26/2011 2:00 PM LOB 204
5/3/2011	H	Subcommittee Work Session: 5/3/2011 2:00 PM LOB 204
5/4/2011	H	Subcommittee Work Session: 5/4/2011 1:00 PM LOB 204
5/10/2011	H	Subcommittee Work Session: 5/10/2011 9:30 AM LOB 204
5/10/2011	H	Executive Session: 5/17/2011 1:00 PM LOB 204
5/18/2011	H	Full Committee Work Session: 5/24/2011 11:00 AM LOB 204 ==Executive Session To Follow==
5/24/2011	H	Majority Committee Report: Ought to Pass with Amendment #2156h(NT) for June 1 (Vote 9-3; RC); HC 43 , PG.1498
5/24/2011	H	Proposed Majority Committee Amendment #2011-2156h (New Title); HC 43 , PG.1514-1516
5/24/2011	H	Minority Committee Report: Inexpedient to Legislate; HC 43 , PG.1498
6/1/2011	H	Amendment #2156h(NT) Adopted, VV; HJ 48 , PG.1632-1634
6/1/2011	H	Floor Amendment #2011-2235h (NT) (Rep Hoell); HJ 48 , PG.1634-1637
6/1/2011	H	Lay Floor Amendment #2235(NT) on Table (Rep Swinford): MA RC 257-92 ; HJ 48 , PG.1637-1639

6/1/2011	H	Ought to Pass with Amendment #2156h(NT): MA RC 248-111; HJ 48, PG.1632-1641
6/8/2011	S	Sen. Houde Moved Nonconcur with House Amendment 2156h; NT, Requests C of C, MA, VV; SJ 20, Pg.549
6/8/2011	S	President Appoints: Senators Boutin, Groen, and Houde; SJ 20, Pg.549
6/8/2011	H	House Accedes to Senate Request for C of C (Rep Swinford): MA VV; HJ 51, PG.1723
6/8/2011	H	Speaker Appoints: Reps Kreis, Welch, Gagne, and Shurtleff; HJ 51, PG.1723
6/9/2011	S	Committee of Conference Meeting: 6/13/2011, 1:00 p.m., Room 102, LOB
6/13/2011	H	Conferee Change: Rep Warden Replaces Rep Gagne; HJ 51, PG.1727
6/13/2011	S	Committee of Conference Meeting: 6/15/2011, 1:00 p.m., Room 102, LOB
6/15/2011	S	Conferee Change; Senator White Replaces Senator Houde
6/15/2011	H	Conferee Change: Rep Bettencourt Replaces Rep Welch; HJ 51, PG.1727
6/15/2011	S	C of C Meeting: == RECESSED === 6/15/2011, 1:00 p.m., Room 102, LOB
6/15/2011	S	C of C Meeting: == RECONVENE === 6/15/2011, 1:30 p.m., Room 102, LOB
6/16/2011	H	Conference Committee Report #2011-2487c , House AM + New AM, Filed; HC 49, PG.1674-1675
6/22/2011	H	Conference Committee Report #2487c Adopted, RC 283-89
6/22/2011	S	Conference Committee Report 2487c; RC 19Y-5N, Adopted
6/22/2011	H	Enrolled Bill Amendment #2524e(NT) Adopted
6/22/2011	S	Enrolled Bill Amendment #2011-2524e , NT, Adopted, VV
6/22/2011	H	Enrolled
6/22/2011	S	Enrolled
7/13/2011	S	Vetoed by Governor 07/13/2011

NH House

NH Senate

Other Referrals

SB 88 -- (2ND NEW TITLE) RELATIVE TO PHYSICAL FORCE IN DEFENSE OF A PERSON,
BRANDISHING A FIREARM OR OTHER MEANS OF SELF-DEFENSE, AND CARRYING
FIREARMS.

COMMITTEE REPORT FILE INVENTORY

ORIGINAL REFERRAL RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

- DOCKET (Submit only the latest docket found in Bill Status)
- COMMITTEE REPORT
- CALENDAR NOTICE
- HEARING REPORT
- PREPARED TESTIMONY AND OTHER SUBMISSIONS HANDED IN AT THE PUBLIC HEARING

SIGN-UP SHEET(S) (2)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 1130S _____ - AMENDMENT # _____
- AMENDMENT # 1222S _____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

- AS INTRODUCED _____ AS AMENDED BY THE HOUSE
- FINAL VERSION _____ AS AMENDED BY THE SENATE
- Version adopted by both bodies

____ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

∅

DATE DELIVERED TO SENATE CLERK

7/21/11

BY:

Susan H. [Signature]
COMMITTEE AIDE