

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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

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

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

(c) 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 [ætor] ***person*** has provoked the use of force against himself ***or herself*** in the same encounter[-]; ***or***

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

II-g. If a person is convicted of a felony, an element of which is the possession, use or attempted use of a deadly weapon, and the deadly weapon is a firearm, such person may be sentenced to a maximum term of 20 years' imprisonment in lieu of any other sentence prescribed for the crime. ~~[The person shall be given a minimum mandatory sentence of not less than 3 years' imprisonment for a first offense and a minimum mandatory sentence of not less than 6 years' imprisonment if such person has been previously convicted of any state or federal offense for which the maximum penalty provided was imprisonment in excess of one year, and an element of which was the possession, use or attempted use of a firearm. Neither~~

~~the whole nor any part of the minimum sentence imposed under this paragraph shall be suspended or reduced.]~~

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

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

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

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

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

VETOED: July 13, 2011