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IN THE SUPREME COURT OF FLORIDA

IN RE: STANDARD JURY INSTRUCTIONS CRIMINAL CASES REPORT 2014-06 **CASE NO.: SC14-**

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To the Chief Justice and Justices of the Supreme Court of Florida:

This report, proposing amended instructions to the Florida Standard Jury Instructions in Criminal Cases, is filed pursuant to Article V, section 2(a), Florida Constitution.

	Instruction #	**Topic**
Proposal 1	**3.6(f)**	**Justifiable Use of Deadly Force**
Proposal 2	**3.6(g)**	**Justifiable Use of Non-deadly Force**

The proposals are in Appendix A. Words and punctuation to be deleted are shown with strike-through marks; words and punctuation to be added are underlined.

The proposals were published in the August 1, 2014 edition of The Florida Bar News. Appendix B contains four comments that were sent to the Committee.

The latest self-defense statutes (Chapter 2014-195, Laws of Florida) are in Appendix C.

Note to the Court

SC12-1363 contains Committee proposals for the justifiable use of deadly and non-deadly force instructions. However, the 2014 legislature amended the self-defense statutes, which required changes to those proposals. The Committee will therefore be filing a motion to withdraw its proposals filed in SC12-1363. Moreover, because self-defense is often used as a defense, the Committee believes the Court may want to expedite this case.

Proposal 1 – 3.6(f) – Justifiable Use of Deadly Force

The first proposed change is to the initial italicized instruction. The Committee voted unanimously to change the word "defenses" to "statutes" for purposes of clarity. Additionally, the Committee thought it would be helpful to explain at the beginning of the instruction that unless the evidence establishes the

force used was deadly or non-deadly as a matter of law, both the "use of deadly force" and the "use of non-deadly force" jury instructions must be read. This part of the italicized note is supported by *Mathis v. State*, 863 So. 2d 464 (Fla. 1st DCA 2004). The Committee also voted unanimously to add the idea from *Hosnedl v. State*, 126 So. 3d 400 (Fla. 4th DCA 2013) that only the discharge of a firearm, whether accidental or not, has been deemed to be the use of deadly force as a matter of law. The proposal is as follows:

Because there are many ~~defenses~~statutes applicable to self-defense, give only those parts of the instructions that are required by the evidence. However, unless the evidence establishes the force or threat of force was deadly or non-deadly as a matter of law, both 3.6(f) and 3.6(g) must be given. Mathis v. State, 863 So. 2d 464 (Fla. 1st DCA 2004). Only the discharge of a firearm, whether accidental or not, has been deemed to be the use of deadly force as a matter of law. Hosnedl v. State, 126 So. 3d 400 (Fla. 4th DCA 2013).

The next proposed section is:

Read in all cases.

An issue in this case is whether the defendant acted in self-defense. It is a defense to the ~~offense with which~~ (defendant) **~~is charged if the [death of] [injury to]~~** (victim) **~~resulted from~~crime[s] of** (name[s] of relevant crime[s] charged) **if the actions of the defendant constituted the justifiable use of deadly force.**

The Committee voted unanimously to amend this section because of *Bassallo v. State*, 46 So.3d 1205 (Fla. 4th DCA 2010). The *Bassallo* court found that the existing standard instruction creates error in aggravated assault cases because there is no physical injury or death in an aggravated assault prosecution. To remedy this, the Committee deleted the part of one sentence that referred to the injury or death of the victim.

The Committee proposes no change for the definition of "deadly force."

Immediately following the definition of "deadly force," the next two sections cover s. 782.02 and s. 776.012, F.S. These statutes both address the justifiable use of deadly force, but they do not mimic each other. The fact that there are two justifiable use of deadly force statutes and the fact that these statutes have

different provisions raise a question about when to instruct on s. 782.02 and when to instruct on s. 776.012.

One former member and one current member suggested that it would be appropriate to instruct on s. 782.02 in homicide cases and to instruct on s. 776.012 in non-homicide cases because Chapter 782, F.S., is the Homicide chapter. But there is no case law to support that idea.

Another problem is the absence of "no duty to retreat" and "threat to use deadly force" language in s. 782.02, although those ideas are prominent in Chapter 776.

Ultimately, the present Committee decided to add an italicized note stating: *Both Chapter 776 and § 782.02, Fla. Stat. address the justifiable use of deadly force.* Then, in the sections below that italicized note to the judge, there are "*Give if applicable"* to help trial judges know that they can read one or more sections.

For s. 782.02, the proposal is as follows:

Give if applicable. § 782.02, Fla. Stat.

The use of deadly force is justifiable ~~only~~if the defendant reasonably believesd that the force ~~is~~was necessary to prevent imminent death or great bodily harm to [himself] [herself] while resisting:

1. another's attempt to murder [him] [her], or

2. any attempt to commit (applicable felony) **upon [him] [her], or**

3. any attempt to commit (applicable felony) **upon or in any dwelling~~, residence, or vehicle~~ occupied by [him] [her].**

~~Insert and define~~Give the elements of the applicable felony that defendant alleges victim attempted to commit, but omit any reference to burden of proof. See Montijo v. State, 61 So.3d 424 (Fla. 5th DCA 2011).

For this section, two members argued that the word "only" should remain in the standard instruction because defendants must consider options - other than retreating - before using deadly force. However, the rest of the Committee disagreed because the word "only" is not in s. 782.02 and the word "necessary" allows prosecutors to argue that the defendant had options other than retreating and using deadly force.

Additionally, the Committee unanimously agreed to delete the words "residence" and "vehicle" from alternative #3 because s. 782.02 refers only to "dwelling house" and not to a "residence" or a "vehicle."

Furthermore, for this section, the Committee unanimously agreed to expand an italicized instruction in order to inform everyone about the mistake made in *Montijo v. State,* 61 So. 3d 424 (Fla. 5th DCA 2011). In that case, the judge instructed jurors on the burden of persuasion when the judge defined the felony that the defendant claimed the victim was committing. After *Montijo*, the same mistake was made in *Alexander v. State,* 121 So. 3d 1185 (Fla. 1st DCA 2013). The Committee's proposal is designed to make it clear that judges should omit any reference to the burden of proof when defining the felony. For consistency, this *Montijo*-related change was made in all relevant places throughout both self-defense instructions.

The Committee would also like to bring to the Court's attention that there is no language in s. 782.02 about "a defendant's reasonable belief to prevent imminent death or great bodily harm to himself/herself/another." What s. 782.02 actually states is: "The use of deadly force is justifiable when a person is resisting any attempt to murder such person or to commit any felony upon him or her or upon or in any dwelling house in which such person shall be." Despite the fact that the proposed standard instruction would not precisely track the statute, the Committee thought it best to retain most of the existing language because, if read literally, the statute would a) not require that the threat be imminent and b) justify the killing of a thief in the killer's dwelling who was caught stealing a $300 item.

The next section in the standard instruction covers s. 776.012 and s. 776.031. The Committee's proposal is as follows:

Give if applicable. §§ 776.012(2), 776.031(2), Fla. Stat.

~~A person is~~(Defendant) **was justified in [using] [or] [threatening to use] deadly force if [he] [she] reasonably believes~~s~~d that such [force] [or] [threat of force] ~~is~~was necessary to prevent [imminent death or great bodily harm to [himself] [herself] [or] [another] [or] [the imminent commission of** (applicable forcible felony listed in § 776.08, Fla. Stat.) **against [himself] [herself] [or another]. If** (defendant) **was not otherwise engaged in criminal activity and was in a place [he] [she] had a right to be, then [he] [she] had no duty to retreat and had the right to stand [his] [her] ground.**

~~1. imminent death or great bodily harm to [himself] [herself] or another, or~~

2. the imminent commission of (applicable forcible felony listed in § 776.08, Fla. Stat.) **against [himself] [herself] [or another].**

*Insert and define*Give the elements of the applicable forcible felony that defendant alleges victim was about to commit, but omit any reference to burden of proof. See Montijo v. State, 61 So. 3d 424 (Fla. 5th DCA 2011). *Forcible felonies are listed in § 776.08, Fla. Stat.*

For this section, the Committee proposes to cite specifically to s. 776.012(2) and 776.031(2), to add language about "the threat of force" (as opposed to just "force"), and to add language about there being no duty to retreat if the defendant was not engaged in criminal activity and was in a place where he had a right to be. All of these changes, which were agreed to unanimously by the Committee, are supported by the 2014 legislation.

The Committee notes that the language in both the existing standard instruction and in the Committee's proposal that requires that the defendant's use of force (or threat of force) be necessary to prevent the imminent commission of a forcible felony *to himself, herself, or another*, is not in the statute. Even the 2014 versions of the relevant statutes, s. 776.012(2) and s. 776.031(2), if read literally, allow a defendant to use deadly force to prevent the imminent commission of *any* forcible felony. The statutes do not require that the forcible felony be directed against a person. It is therefore arguable that under either s. 776.012(2) or s. 776.031(2), someone could shoot and kill another person who was trying to break into a car as long as the shooter reasonably believed that a killing was necessary to prevent a burglary conveyance (which is a forcible felony).

For this issue, the Committee faced a dilemma similar to the problem faced with the s. 782.02 section: On the one hand, the Committee wanted to track the statutes. On the other hand, the Committee did not want to propose a change to a long-standing part of the standard instruction without case law support. In sum, the Committee voted unanimously to leave the words "against himself, herself, or another" in this "s. 776.012(2), 776.031(2)" section of the standard instruction.

The next section of the standard instruction deals with s. 776.041. The Committee unanimously decided to strike-through this section at this place in the standard instruction and to move the *Aggressor* section more toward the end of the instruction. The reason for the re-location is that it was thought that exceptions should come after the other self-defense statutes are covered.

The next two paragraphs in the existing standard instruction cover 1) force or threatening to use force in resisting a law enforcement officer and 2) the use of excessive force by an officer. The Committee's only changes for these sections are to add language about the "threat of force," which is a new concept that was added in the recent legislation. The amendments to these paragraphs were unanimous and are as follows:

Force or threat of force in resisting a law enforcement officer. § 776.051(1), Fla. Stat.

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

Give if applicable.

However, if an officer uses excessive force to make an arrest, then a person is justified in the [use] [or] [threatened use] of reasonable force to defend [himself] [herself] (or another)**, but only to the extent [he] [she] reasonably believes such [force] [or] [threat of force] is necessary.** *See § 776.012, Fla. Stat.; Ivester v. State, 398 So. 2d 926 (Fla. 1st DCA 1981); Jackson v. State, 463 So. 2d 372 (Fla. 5th DCA 1985).*

The next section is an italicized instruction that states:

In some instances, the instructions applicable to §§ 776.012, 776.031, or 776.041, Fla. Stat., may need to be given in connection with this instruction.

The vote was unanimous to delete this italicized instruction because the Committee's proposals cover all parts of the latest versions of s. 776.012, s. 776.031, and s. 776.041.

The next paragraph, which starts with an italicized note to "*Read in all cases"* and which covers the appearance of danger being real to the defendant, was discussed at multiple meetings.

The discussions centered on the part of the paragraph that states "**… the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force**." Because of the word "only," some former and existing Committee members and some of the

commentators in SC12-1363 believe that this instruction conflicts with the stand-your-ground statutes. Ultimately, the Committee voted unanimously (post-publication) to add the following sentence to the end of that paragraph: **However, as I have previously explained, the defendant had no duty to retreat if [he] [she] was not otherwise engaged in criminal activity and was in a place where [he] [she] had a right to be.**

The Committee also considered post-publication comments from Ms. Lewis and Mr. Gutmacher regarding this paragraph. (See Appendix B.) The Committee agreed with Ms. Lewis to delete the language about "judging the defendant." The Committee agreed with Mr. Gutmacher that the danger could be facing someone other than the defendant. Other Committee responses to comments about this paragraph will be discussed later in the report. The Committee's final proposal is:

Read in all cases.

In deciding whether ~~defendant~~(defendant) **was justified in the [use] [or] [threatened use] of deadly force, you must ~~judge [him] [her] by~~consider the circumstances by which [he] [she] was surrounded at the time the [force] [or] [threat of force] was used. The danger ~~facing the defendant~~need not have been actual; however, to justify the [use] [or] [threatened use] of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that [force] [or] [threat of force]. Based upon appearances, ~~the defendant~~**(defendant) **must have actually believed that the danger was real. However, as I have previously explained, the defendant had no duty to retreat if [he] [she] was not otherwise engaged in criminal activity and was in a place where [he] [she] had a right to be.**

The next section of the standard instruction starts with an italicized note about *"No duty to retreat"* and is followed by a reference to s. 776.013(3). The Committee's proposal is for this entire paragraph and for the italicized instruction that immediately follows to be deleted because the law that is contained within the latest version of s. 776.013(3) is already covered by the instruction for s. 776.012 and s. 776.031. Thus, the proposal is as follows:

~~*No duty to retreat. § 776.013(3), Fla. Stat. See Novak v. State 974 So. 2d 520 (Fla. 4th DCA 2008) regarding unlawful activity. There is no duty to retreat where the defendant was not engaged in any unlawful activity other than the crime(s) for which the defendant asserts the justification.*~~

~~**If the defendant [was not engaged in an unlawful activity and] was**~~

~~**attacked in any place here [he] [she] had a right to be, [he] [she] had no duty to retreat and had the right to stand [his] [her] ground and meet force with force, including deadly force, if [he] [she] reasonably believed that it was necessary to do so to prevent death or great bodily harm to [himself] [herself] [another] or to prevent the commission of a forcible felony.**~~

~~*Define applicable forcible felony that defendant alleges victim was about to commit.*~~

The next section of the standard instruction deals with the "*Presumption of fear*." The Committee voted unanimously to delete the existing "*Presumption of fear*" paragraph and to replace it with a new "*Presumptions of fear*" section that more closely tracks the new statute (including the concept of "threatening to use defensive force" which is in the new legislation). The proposal is as follows:

~~*Presumption of Fear (dwelling, residence, or occupied vehicle). Give if applicable. § 776.013, Fla. Stat.*~~

~~**If the defendant was in a(n) [dwelling] [residence] [occupied vehicle] where [he] [she] had a right to be, [he] [she] is presumed to have had a reasonable fear of imminent death or great bodily harm to [himself] [herself] [another] if** (victim) **had [unlawfully and forcibly entered] [removed or attempted to remove another person against that person's will from] that [dwelling] [residence] [occupied vehicle] and the defendant had reason to believe that had occurred. The defendant had no duty to retreat under such circumstances.**~~

Presumption of fear (unlawful and forcible entry into dwelling, residence, or occupied vehicle). Give if applicable. §776.013(1), Fla. Stat.

(Defendant) **is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to [himself] [herself] [another] when [using] [or] [threatening to use] defensive force that was intended or likely to cause death or great bodily harm to another if:**

a. The person against whom the defensive force was [used] [or [threatened to be used] was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and

b. (Defendant) **knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.**

The next section of the standard instruction explains the "*Exceptions to Presumptions of Fear*" in s. 776.013(2)(a)-(2)(d). The main alteration the Committee proposes for this section is to add language about the "threat to use force" (which is the major change in the 2014 legislation). The proposal for this section is as follows:

Exceptions to Presumption of Fear. § 776.013(2)(a)-(2)(d), Fla. Stat. Give as applicable.

The presumption of reasonable fear of imminent death or great bodily harm does not apply if:

a. **the person against whom the defensive force is [used] [or] [threatened to be used] has the right to be in [or is a lawful resident of the [dwelling] [residence]] [~~the~~ vehicle], such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or**

b. **the person or persons sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is [used] [or] [threatened to be used]; or**

c. **the person who [uses] [or] [threatens to use] defensive force is engaged in ~~an unlawful~~a criminal activity or is using the [dwelling] [residence] [occupied vehicle] to further ~~an unlawful~~a criminal activity; or**

d. **the person against whom the defensive force is [used] [or] [threatened to be used] is a law enforcement officer, who enters or attempts to enter a [dwelling] [residence] [vehicle] in the performance of [his] [her] official duties and the officer identified [himself] [herself] in accordance with any applicable law or the person [using] [or] [threatening to use] the force knew or**

reasonably should have known that the person entering or attempting to enter was a law enforcement officer.
If requested, give definition of "law enforcement officer" from § 943.10(14), Fla. Stat.

The next two sections of the standard instruction deal with s. 776.013(4) and s. 776.013(5). Here the Committee made only a stylistic change. Instead of separating a s. 776.013(4) section from a s. 776.013(5) section, the Committee put them together with one italicized note at the top and the definitions of "dwelling," "residence," and "vehicle" right below. The streamlined proposal is as follows:

§ 776.013(4), Fla. Stat. § 776.013(5), Fla. Stat. Give if applicable.
A person who unlawfully and by force enters or attempts to enter another's [dwelling] [residence] [occupied vehicle] is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

~~*Definitions. Give if applicable. § 776.013(5), Fla. Stat.*~~
~~**As used with regard to self defense:**~~

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

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

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

The next section of the standard instruction is proposed to be the *Aggressor* section, which was moved to this spot because it is an exception to the self-defense statutes. In addition to moving the *Aggressor* section, the Committee proposes to create one *Aggressor* section to cover s. 776.041(1) and another *Aggressor* section to cover s. 776.041(2).

For the s. 776.041(1) section, the Committee debated the content of the italicized instruction at the beginning of this section. The issue that concerned the Committee is whether a defendant has to be *charged* with an independent forcible felony for this part of the instruction to be read as opposed to there simply being

evidence introduced during the trial that the defendant was the initial aggressor by committing an independent forcible felony.

The Committee recognized that there are cases that say that in order for this part of the instruction to apply, an independent forcible felony must be charged. However, s. 776.041(1) makes no mention that a defendant has to be *charged* with an independent forcible felony. Moreover, the Committee concluded that the existing italicized note regarding *Giles v. State,* 831 So. 2d 1263 (Fla. 4th DCA 2002) does not accurately reflect *Giles* because *Giles* does not require that the defendant be *charged* with an independent forcible felony. What *Giles* states is: "The instruction is normally given in situations where the accused is charged with at least two criminal acts, the act for which the accused is claiming self-defense and a separate forcible felony." Id. at 1265.

The reason for the case law that appeared post-*Giles* is unclear. It is clear, however, that the Standard Jury Instruction Committee sent a proposal to the Court in 2005 that incorrectly explained *Giles* with the following italicized instruction: *Give ~~if applicable~~ only if the defendant is charged with more than one forcible felony.* The Committee's proposal was then authorized for use in *In re Standard Jury Instructions In Criminal Cases (No. 2005-4),* 930 So. 2d 612 (Fla. 2006). Not long after, the Court issued *Martinez v. State*, 981 So. 2d 449 (Fla. 2008) which relied on the Court's amendment to the *Giles* italicized note in the jury instruction case. However, in 2007, the Standard Jury Instruction Committee revised this italicized note to read: *Give only if the defendant is charged with ~~more than one~~an independent forcible felony*. The revised italicized note was authorized for use in *In re Standard Jury Instructions In Criminal Cases (No. 2007-03),* 978 So. 2d 1081 (Fla. 2008).

It may be that as a result of an inaccurate italicized note in the standard jury instructions, the law has morphed into the idea that the *Aggressor* section covering s. 776.041(1) can only be read to jurors if an independent forcible felony is charged. See for example post-*Giles* cases such as *Martinez v. State,* 981 So. 2d 449 (Fla. 2008); *Santiago v. State,* 88 So. 3d 1020 (Fla. 2nd DCA 2012); and *Morgan v. State*, 127 So. 3d 708 (Fla. 5th DCA 2013).

One former member of the Committee argued that the purpose of requiring the defendant to be *charged* with the independent forcible felony is to give the defendant notice. But the Committee was not persuaded by that logic, particularly since defendants do not give notice to the state that they are going to rely on the affirmative defense of self-defense. Because the prosecutor goes to trial guessing

that the defendant will claim self-defense, the Committee did not believe the state has to give notice, via an additional charged count, that self-defense does not apply because there is evidence that the defendant was the initial aggressor. Note: In SC12-1363, the Florida Association of Criminal Defense Lawyers (FACDL) filed a comment in opposition to amending the italicized note as recommended by a former Committee. FACDL did not file a comment in response to the proposals published August 1, 2014 from the current committee.

The Committee's final opinion was that it would be best for the italicized *Giles* note to more accurately reflect *Gile*s. This view was supported not only by the language in s. 776.041(1), but also by *Barnett v. Secretary, Florida Dept. of Corrections,* 2009 WL 764522, (M.D. Fla. March 20, 2009). The Committee voted unanimously for an instruction that covers the latest version of s. 776.041(1) as follows:

Aggressor. § 776.041(1), Fla. Stat. Give if applicable.
Give only if there is evidence that the defendant was committing an independent forcible felony. This instruction is normally given in situations where the accused is charged with at least two criminal acts: The act for which the accused is claiming self-defense and a separate forcible felony. See Giles v. State, 831 So. 2d 1263 (Fla. 4th DCA 2002).
However, the [use] [or] [threatened use] of deadly force is not justified if you find that (defendant) **was attempting to commit, committing, or escaping after the commission of** (applicable forcible felony listed in § 776.08, Fla. Stat.)**.**
Give the elements of the applicable forcible felony but omit any reference to burden of proof. See Montijo v. State, 61 So. 3d 424 (Fla. 5th DCA 2011).

Next, the Committee proposes to create a separate s. 776.041(2) section. The biggest change for this section relates to an idea from *Gibbs v. State,* 789 So. 2d 443 (Fla. 4th DCA 2001). Specifically, the existing instruction refers to the defendant initially provoking the use of force against himself. But the existing standard instruction gives no guidance as to what constitutes an initial provocation. *Gibbs* provides an answer. *Gibbs* states that an initial provocation does not take place simply by the mere use of words or conduct without force. Instead, an initial provocation has to involve either the use of force or the threat of force.

The Committee's proposal for the latest version of s. 776.041(2) is:

Aggressor. § 776.041(2), Fla. Stat. Give if applicable.
Gibbs v. State, 789 So. 2d 443 (Fla. 4th DCA 2001).

However, the [use] [or] [threatened use] of deadly force is not justified if you find that (defendant)**, by the [use] [or] [threatened use] of force, initially provoked the [use] [or] [threatened use] of force against [himself] [herself], unless:**

1. The [force] [or] [threat of force] asserted toward the defendant was so great that [he] [she] reasonably believed that [he] [she] was in imminent danger of death or great bodily harm and had exhausted every reasonable means to escape the danger, other than [using] [or] [threatening to use] deadly force on (victim)**.**

2. In good faith, (defendant) **withdrew from physical contact with** (victim) **and clearly indicated to** (victim) **that [he] [she] wanted to withdraw and stop the [use] [or] [threatened use] of deadly force, but** (victim) **continued or resumed the [use] [or] [threatened use] of force.**

The next section in the standard instruction is the section on *Prior threats*. The Committee realized that it needed to amend this paragraph because it contains language from prior self-defense statutes regarding "no duty to retreat if the defendant was not engaged in unlawful activity." Additionally, the existing instruction refers to a defendant's right to arm himself if he had received prior threats. But citizens generally have a right to arm themselves regardless of the existence of prior threats. To fix this section, the Committee unanimously proposed the following:

Prior threats. Give if applicable.

If you find that the defendant, who because of threats or prior difficulties with (victim), **had reasonable grounds to believe that [he] [she] was in danger of death or great bodily harm at the hands of** (victim), ~~**then the defendant had the right to arm [himself] [herself],**~~**you may consider this fact in determining whether the actions of the defendant were those of a reasonable person**. ~~**However, the defendant cannot justify the use of deadly force, if after arming [himself] [herself] [he] [she] renewed [his] [her] difficulty with** (victim) **when [he] [she] could have avoided the difficulty, although as previously explained if the defendant was not engaged in an unlawful activity and was attacked in any place where [he] [she] had a right to be, [he] [she] had no duty to retreat.**~~

Next, the Committee proposed that a new paragraph be added to the section dealing with the victim's reputation. The proposal is based on the idea that the

reputation of the victim is admissible for different purposes and that trial judges should be given notice about the separate purposes. The proposal makes it clear that the reputation of a victim may be a) known by the defendant and b) not necessarily known by the defendant. A second paragraph about the victim's reputation offered to prove that the victim acted in conformity with his/her character was added. The vote for these amendments was unanimous.

The proposal for these two ideas is as follows:

Reputation of victim known by defendant. Give if applicable.
If you find that (victim) **had a reputation of being a violent and dangerous person and that [his] [her] reputation was known to the defendant, you may consider this fact in determining whether the actions of the defendant were those of a reasonable person in dealing with an individual of that reputation.**

Reputation of victim not necessarily known by defendant (to show victim acted in conformity with victim's character). Give if applicable.
If you find that (victim) **had a reputation of being a violent and dangerous person, you may consider this fact in determining whether [he][she] was the initial aggressor.**

Finally, in order to make it clear that the state has the burden of persuasion once the defendant has satisfied his or her burden of production, the Committee unanimously agreed to add "beyond a reasonable doubt" to the last paragraph of the instruction. The proposal is as follows:

However, if from the evidence you are convinced beyond a reasonable doubt that the defendant was not justified in the use of deadly force, you should find [him] [her] guilty if all the elements of the charge have been proved.

Finally, the Committee did not like the idea from one commentator (Mr. Cavanagh) that the standard instructions should cover the law of self-defense both before and after the latest legislative changes. To make that clear, the Committee voted unanimously to add a note to the Comment section that states: "This instruction should be used for crimes committed on or after June 20, 2014. See Chapter 2014-195, Laws of Florida."

Proposal 2 – 3.6(g) – Justifiable Use of Non-deadly Force

Many of the issues for the justifiable use of non-deadly force instruction were addressed by the Committee in the justifiable use of deadly force instruction.

Just like in 3.6(f), the Committee voted unanimously to substitute the word "statutes" for "defenses" in the initial italicized note and to incorporate the ideas from *Mathis* and *Hosnedl*. The proposal for the initial italicized paragraphs is the same as the proposal for the use of deadly force:

Because there are many ~~defenses~~statutes applicable to self-defense, give only those parts of the instructions that are required by the evidence. However, unless the evidence establishes the force used was deadly or non-deadly as a matter of law, both 3.6(f) and 3.6(g) must be given. Mathis v. State, 863 So. 2d 464 (Fla. 1st DCA 2004). Only the discharge of a firearm, whether accidental or not, has been deemed to be the use of deadly force as a matter of law. Hosnedl v. State, 120 So. 3d 400 (Fla. 4th DCA 2013).

The Committee also agreed unanimously to remedy the problem raised by *Bassallo v. State*, 46 So. 3d 1205 (Fla. 4th DCA 2010) in the same way proposed in the justifiable use of deadly force instruction. The proposal is as follows:

Read in all cases.

An issue in this case is whether the defendant acted in self-defense. It is a defense to the ~~offense with which~~ (defendant) **~~is charged if the [death of] [injury to]~~** (victim) **~~resulted from~~ crime[s] of** (name[s] relevant of crime[s] charged) **if the actions of the defendant constituted the justifiable use of non-deadly force.**

The Committee proposes no change for the definition of "non-deadly force."

The next section of the standard instruction has to with "*In defense of person.*" The Committee's proposal makes the instruction consistent with the latest version of s. 776.012(1). It is as follows:

In defense of person. § 776.012(1), Fla. Stat. Give if applicable.

(Defendant) **~~would be~~was justified in [using] [or] [threatening to use] non-deadly force against** (victim) **and had no duty to retreat if ~~the following two facts are proved:~~ [he] [she] reasonably believed that such conduct was necessary to defend [himself] [herself] [another] against** (victim's) **imminent use of unlawful force.**

~~1. (Defendant) must have reasonably believed that such conduct was necessary to defend [himself] [herself] [another] against (victim's)~~

~~**imminent use of unlawful force against the [defendant] [another person] .; and**~~

~~**2. The use of unlawful force by** (victim) **must have appeared to** (defendant) **to be ready to take place.**~~

The next section covers "*In defense of property.*" The Committee's proposal makes the instruction consistent with the latest version of s. 776.031(1). It is as follows:

In defense of property. § 776.031(1), Fla. Stat. Give if applicable.

(Defendant) ~~**would be**~~**was justified in [using] [or] [threatening to use] non-deadly force against** (victim) **and had no duty to retreat if** ~~**the following three facts are proved**~~**:**

1. (Victim) ~~**must have been**~~**[was about to trespass] [or] [was trespassing] or [was about to wrongfully interfere] [or] [was** ~~**otherwise**~~ **wrongfully interfering] with land or personal property**~~**.**~~**; and**

2. The land or personal property ~~**must have**~~ **was lawfully** ~~**been**~~ **in** (defendant's) **possession, or in the possession of a member of [his] [her] immediate family or household, or in the possession of some person whose property [he] [she] was under a legal duty to protect**~~**.**~~**; and**

3. (Defendant) ~~**must have**~~ **reasonably believed that [his] [her] [use] [or] [threatened use] of force was necessary to prevent or terminate** (victim's) **wrongful behavior.**

The next section in the existing instruction deals with the concept of no duty to retreat if the defendant is in his dwelling, residence, or vehicle. Because jurors will have been instructed that the defendant had no duty to retreat in either the preceding s. 766.012(1) or the s. 776.031(1) sections, the Committee unanimously recommended that this portion of the standard instruction be deleted. The proposal is as follows:

~~*No duty to retreat (dwelling, residence, or occupied vehicle). Give if applicable.*~~

~~**If the defendant is in [his] [her] [dwelling] [residence] [occupied vehicle] [he] [she] is presumed to have held a reasonable fear of imminent peril of**~~

~~**death or bodily injury to [himself] [herself] [another] if** (victim) **has [unlawfully and forcibly entered] [has removed or attempted to remove another person against that person's will from] that [dwelling] [residence] [occupied vehicle] and the defendant had reason to believe that had occurred. The defendant had no duty to retreat under such circumstances.**~~

The Committee then discussed whether the "*Presumptions of fear*" in s. 776.013(1) and the "*Exceptions to the presumptions of fear*" in s. 776.013(2) apply to the justifiable use of non-deadly force. The existing non-deadly self-defense instruction does not have a section that covers the "*Presumptions of fear*" and the "*Exceptions to the presumptions of fear*." The reason for that is probably that s. 776.013(1) applies when a person is using deadly force. However, the Committee concluded that it was unreasonable to conclude that a defendant gets the benefit of a "presumption of fear" if he or she uses deadly force, but would not get the same benefit by responding to an attack with non-deadly force. Accordingly, the Committee mostly copied the language from the use of deadly force self-defense instruction. The Committee unanimously proposed that the use of non-deadly force instruction include the following two sections, which are updated for the recent legislation:

Presumption of fear (unlawful and forcible entry into dwelling, residence, or occupied vehicle). Give if applicable. § 776.013(1), Fla. Stat.

(Defendant) **is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to [himself] [herself] [another] when [using] [or] [threatening to use] defensive force if:**

a. The person against whom the defensive force was [used] [or] [threatened to be used] was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and

b. The defendant knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

Exceptions to Presumption of Fear. § 776.013(2)(a)-(2)(d), Fla. Stat. Give as applicable.

The presumption of reasonable fear of imminent death or great bodily harm does not apply if:

a. the person against whom the defensive force is [used] [or] [threatened to be used] has the right to be in [or is a lawful resident of the [dwelling] [residence]] [vehicle], such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or

b. the person or persons sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is [used] [or] [threatened to be used]; or

c. the person who [uses] [or] [threatens to use] defensive force is engaged in a criminal activity or is using the [dwelling] [residence] [occupied vehicle] to further a criminal activity; or

d. the person against whom the defensive force is [used] [or] [threatened to be used] is a law enforcement officer, who enters or attempts to enter a [dwelling] [residence] [vehicle] in the performance of [his] [her] official duties and the officer identified [himself] [herself] in accordance with any applicable law or the person [using] [or] [threatening to use] the force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.
If requested, give definition of "law enforcement officer" from § 943.10(14), Fla. Stat.

Next, the Committee unanimously voted to add a cite to s. 776.013(4) and to put a cite to s. 776.013(5) followed by a "*Give if applicable"* all on the same line. By doing so (and by deleting some sections discussed below), the definitions of "dwelling," "residence," and "vehicle" will immediately follow the explanation for s. 776.013(4).

The proposal for this part of the instruction is as follows:
§ 776.013(4), § 776.013(5), Fla. Stat. Give if applicable.
A person who unlawfully and by force enters or attempts to enter another's [dwelling] [residence] [occupied vehicle] is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

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

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

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

In the existing standard instruction, the next sections cover the concept of no duty to retreat. The Committee unanimously proposes to delete all of this because jurors will have already been instructed that the defendant had no duty to retreat in the preceding s. 776.012(1) or the s. 776.031(1) section. The proposed deletions are as follows:

~~*No duty to retreat (location other than dwelling, residence, or occupied vehicle). Give if applicable. See Novak v. State 974 So. 2d 520 (Fla. 4th DCA 2008) regarding unlawful activity. There is no duty to retreat where the defendant was not engaged in any unlawful activity other than the crime(s) for which the defendant asserts the justification.*~~

~~**If the defendant [was not engaged in an unlawful activity and] was attacked in any place where [he] [she] had a right to be, [he] [she] had no duty to retreat and had the right to stand [his] [her] ground and meet force with force, including deadly force, if [he] [she] reasonably believed that it was necessary to do so to prevent death or great bodily harm to [himself] [herself] [another] or to prevent the commission of a forcible felony.**~~

~~*Definitions.*~~

~~**As used with regard to self defense,**~~

~~*Define applicable forcible felony that defendant alleges victim was about to commit.*~~

~~*Give in all cases.*~~

~~**A person does not have a duty to retreat if the person is in a place where [he] [she] has a right to be.**~~

The next section of the non-deadly standard instruction covers the topic of the defendant being the aggressor. For this section, the proposal is to relocate this section more toward the end of the instruction. Thus, the proposal is to delete here as follows:

~~*Aggressor. § 776.041, Fla. Stat.*~~

~~**The use of non-deadly force is not justified if you find:**~~

~~*Give only if the defendant is charged with an independent forcible felony. See Giles v. State, 831 So. 2d 1263 (Fla. 4th DCA 2002).*~~

~~**1.** (Defendant) **was attempting to commit, committing, or escaping after the commission of a** (applicable forcible felony).~~

~~*Define applicable forcible felony.*~~

~~**2.** (Defendant) **initially provoke the use of force against [himself] [herself], unless:~~**

~~**a. The force asserted toward the defendant was so great that [he] [she] reasonably believed that [he] [she] was in imminent danger of death or great bodily harm and had exhausted every reasonable means to escape the danger, other than using non-deadly force on** (assailant)**.~~**

~~**b. In good faith, the defendant withdrew from physical contact with** (assailant) **and indicated clearly to** (assailant) **that [he] [she] wanted to withdraw and stop the use of non-deadly force, but** (assailant) **continued or resumed the use of force.~~**

The next section covers the topics of 1) force in resisting a law enforcement officer and 2) an officer using excessive force. The only changes that needed to be made to these paragraphs were to add language covering "the threat of force" (as opposed to just "force"), which is a concept that was included in the recent legislation.

Force or threat of force in resisting a law enforcement officer. § 776.051(1), Fla. Stat.

A person is not justified in [using] [or] [threatening to use] force to resist an arrest by a law enforcement officer, or to resist a law enforcement officer who is engaged in the execution of a legal duty, if the law enforcement

officer was acting in good faith and he or she is known, or reasonably appears, to be a law enforcement officer.

Give the following instruction if applicable.

However, if an officer uses excessive force to make an arrest, then a person is justified in the [use] [or] [threatened use] of reasonable force to defend [himself] [herself] [another], but only to the extent [he] [she] reasonably believes such force is necessary. *See § 776.012, Fla. Stat.; Ivester v. State, 398 So. 2d 926 (Fla. 1st DCA 1981); Jackson v. State, 463 So. 2d 372 (Fla. 5th DCA 1985).*

The Committee unanimously proposes to delete the italicized instruction that states: *In some instances, the instructions applicable to §§ 776.012, 776.031, or 776.041, Fla. Stat., may need to be given in connection with this instruction.*

The reason to delete this sentence is because the use of non-deadly force proposal includes a section on s. 776.012, a section on s. 776.031, and a section on s. 776.041. Thus there is no need to tell the judge that an instruction on those sections may need to be given.

The next section which has an italicized heading of "*Read in all cases*" is similar to the paragraph in the justifiable use of deadly force instruction regarding the defendant's belief that the danger was real. As previously discussed, some members and prior commentators thought this paragraph conflicts with the "stand-your-ground" statutes because of the inclusion of the word "only" in the phrase "…**the danger could be avoided only through the use of that force**." The Committee voted unanimously to make this section of the justifiable use of non-deadly force instruction consistent with the justifiable use of deadly force instruction (except, of course, that the word "non-deadly" would be used instead of "deadly"). The proposal is as follows:

Read in all cases.

In deciding whether ~~defendant~~(defendant) **was justified in the [use] [or] [threatened use] of non-deadly force, you must ~~judge [him] [her] by~~consider the circumstances by which [he] [she] was surrounded at the time the [force] [or] [threat of force] was used. The danger ~~facing the defendant~~need not have been actual; however, to justify the [use] [or] [threatened use] of non-deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that [force]**

[or] [threat of force]. Based upon appearances, ~~the defendant~~(defendant) **must have actually believed that the danger was real. However, as I have previously explained, the defendant had no duty to retreat if [he] [she] was not otherwise engaged in criminal activity and was in a place [he] [she] had a right to be.**

The Committee then proposes to relocate the *Aggressor* section as the next section in the standard instruction. The proposal is very similar to the proposed *Aggressor* section in the justifiable use of deadly force instruction and has the same issue as to whether an independent forcible felony needs to be charged or whether this section can be read if there is evidence introduced during the trial that the defendant was the aggressor because he or she committed an independent forcible felony.

The proposal is as follows:

Aggressor. § 776.041(1), Fla. Stat. Give if applicable.
Give only if there is evidence that the defendant was committing an independent forcible felony. This instruction is normally given in situations where the accused is charged with at least two criminal acts: The act for which the accused is claiming self-defense and a separate forcible felony. See Giles v. State, 831 So. 2d 1263 (Fla. 4th DCA 2002).

However, the [use] [or] [threatened use] of non-deadly force is not justified if you find that (defendant) **was attempting to commit, committing, or escaping after the commission of a[n]** (applicable forcible felony listed in § 776.08, Fla. Stat.)**.**

Give the elements of the applicable forcible felony but omit any reference to burden of proof. Montijo v. State, 61 So.3d 424 (Fla. 5th DCA 2011).

Aggressor. § 776.041(2), Fla. Stat. Give if applicable.
Gibbs v. State, 789 So. 2d 443 (Fla. 4th DCA 2001).

However, the [use] [or] [threatened use] of deadly force is not justified if you find that (defendant**), by the [use] [or] [threatened use] of force, initially provoked the [use] [or] [threatened use] of force against [himself] [herself], unless:**

1. The [force] [or] [threatened force] asserted toward (defendant) **was so great that [he] [she] reasonably believed that [he] [she] was in imminent danger of death or great bodily harm**

and had exhausted every reasonable means to escape the danger, other than using non-deadly force on (victim)**.**

2. In good faith, (defendant) **withdrew from physical contact with** (victim) **and indicated clearly to** (victim) **that [he] [she] wanted to withdraw and stop the [use] [or] [threatened use] of non-deadly force, but** (victim) **continued or resumed the [use] [or] [threatened use] of force.**

Just like in Instruction 3.6(f), a second paragraph about the victim's reputation being considered to prove that the victim acted in conformity with his/her character was added. The proposal for the new paragraph is as follows:

Reputation of victim not necessarily known by defendant (to show victim acted in conformity with victim's character) . Give if applicable.

If you find that (victim) **had a reputation of being a violent and dangerous person, you may consider this fact in determining whether [he] [she] was the initial aggressor.**

Just like in Instruction 3.6(f), the Committee unanimously agreed to add "beyond a reasonable doubt" to the last paragraph of the non-deadly instruction as follows:

Read in all cases.

If, in your consideration of the issue of self-defense you have a reasonable doubt on the question of whether the defendant was justified in the use of non-deadly force, you should find the defendant not guilty.

However, if from the evidence you are convinced beyond a reasonable doubt that the defendant was not justified in the use of non-deadly force, then you should find [him] [her] guilty if all the elements of the charge have been proved.

Finally, just like in the Comment section of Instruction 3.6(f), the Committee added a sentence about using the instruction for crimes committed on or after June 20, 2014.

Post-Publication Comments

The proposed amendments were published on August 1, 2014. Four comments were received and the Committee discussed them at a September 2014 meeting. The Committee's responses are as follows:

Mr. Glen Gifford suggested that the relevant self-defense sections should all start with the same: "**Defendant is justified if**…." The Committee did not agree that all sections had to start the same way because the statutes are worded differently. But in all the sections except the s. 782.02, Fla. Stat. section, the Committee did change "**Defendant would be justified if**…" to "**Defendant was justified if**…".

In addition, based on a suggestion from Mr. Gifford, the Committee reworded the last sentence in the s. 776.012(2)/s. 776.031(2) section from: "**If so,** (defendant) **had no duty to retreat and had the right to stand [his] [her] ground if [he] [she] was not otherwise engaged in criminal activity and was in a place where [he] [she] had a right to be**" to "**If** (defendant) **was not otherwise engaged in criminal activity and was in a place [he] [she] had a right to be, then [he] [she] had no duty to retreat and had the right to stand [his] [her] ground.**

Mr. Gifford also suggested that the section about an officer using excessive force be re-worded to use more concrete language to explain the concepts of "excessive force" and "reasonable force." The Committee unanimously disagreed because the language in the current standard instruction has been used without any problems for a long time and the Committee did not want to create any litigation.

Ms. Eve Mindele Lewis commented that the Committee should delete the portions of the standard instructions that refer to the jury judging the defendant by the circumstances that he faced. The Committee agreed with Ms. Lewis and wrote instead: "…. **you must consider the circumstances by which [he] [she] was surrounded**…."

Mr. Brian Cavanagh wrote a long comment which contained a vote of approval for certain aspects of the Committee's proposals and a lot of other suggestions.

As an initial matter, the Committee did not agree with Mr. Cavanagh that the standard instructions should cover both pre-June 20, 2014 law and post-June 20, 2014 law. The Committee thought such instructions would be too confusing. As mentioned above, the Committee instead added a note in the Comment section that informs everyone that the instructions are designed to be used for crimes committed after the new laws became effective.

The Committee also did not agree with Mr. Cavanagh that it is clear that s. 782.02, Fla. Stat., applies only when the defendant is in his house or that the 2014

legislature implicitly repealed s. 782.02, Fla. Stat. As mentioned earlier, the Committee did, however, add an italicized note stating that both Chapter 776 and s. 782.02 address the justifiable use of deadly force.

Mr. Cavanagh highlighted the opinion of *Floyd v. State*, 39 Fla. L. Weekly D1800 (Fla. 1st DCA August 26, 2014), a case that generated a lot of discussion for the Committee. In *Floyd*, the court held that the standard self-defense instructions constitute fundamental error in cases where the state claims the defendant was the initial aggressor because the jury is told (1) the defendant does not have a duty to retreat and (2) the defendant has a duty to retreat (or more precisely, that the defendant exhausted every reasonable means to escape the danger other than using deadly force). The Committee was not in agreement with the *Floyd* decision. The Committee instead concluded that the aggressor statute (s. 776.041(2), Fla. Stat.) does not conflict with the other self-defense statutes because the general rule is that there is no duty to retreat if the defendant was not engaged in criminal activity. But the general rule does not apply if the jury determines that the defendant was the initial aggressor.

The *Floyd* case may find its way to this Court and thus the Committee unanimously voted to not incorporate the *Floyd* holding into its proposals, but to bring the opinion to the Court's attention.

Mr. Cavanagh points out that the word "imminent" is not in s. 782.02, Fla. Stat., and thus should not be in the standard instruction. As mentioned previously, there are a lot of words in the standard instruction covering s. 782.02, Fla. Stat., that are not in that statute, but the Committee thought it best to leave most of the existing instruction as is. In fact, the Committee was unwilling to add language about "threatening to use force" to the s. 782.02, Fla. Stat., section even though the 2014 legislature added language about the "threat of force" throughout Chapter 776. The Committee's position was to not "rock the boat" regarding the s. 782.02, Fla. Stat., section of the standard instruction, although that section creates a host of issues. And as mentioned previously, the Committee did not agree with Mr. Cavanagh that s. 782.02, Fla. Stat., was implicitly repealed in 2014.

Mr. Cavanagh suggested that the definition of "law enforcement officer" be spelled out in the appropriate place in the instruction. The Committee unanimously disagreed because the Committee felt the self-defense instructions are already very long.

For the Aggressor sections, in addition to the *Floyd* problem, Mr. Cavanagh pointed out that both s. 776.041(1) and s. 776.041(2) may apply, which means there should be an "or" added and that it would be awkward to start both sections with the word "However." The Committee discussed this problem at length but could not come up with an elegant solution other to add "*Give if applicable"* before each section. The Committee's thinking was that if both aggressor sections

apply, the parties or the judge will have to tinker to make the instruction more readable.

In the section about "Reputation not Known by Defendant," Mr. Cavanagh suggested adding the words "even if there is no evidence that the defendant [himself] [herself] knew or was aware of that reputation at the time of the encounter." The Committee thought Mr. Cavanagh was legally correct but voted unanimously not to add those words because the instructions are already lengthy.

For the justifiable use of non-deadly force, Mr. Cavanagh makes many of the same suggestions and the Committee has the same responses. The Committee did agree, however, to delete the comma after the word "If" in the penultimate paragraph of Instruction 3.6(g).

Mr. Jon Gutmacher made six points in his comment. First, he suggested adding the words "including any pertinent knowledge and experience of the defendant" in the paragraph that informs the jury that they must consider the circumstances that the defendant faced. The Committee did not disagree legally, but unanimously concluded that the defendant's knowledge and experience would be a part of the circumstances. Second, Mr. Gutmacher suggested deleting the words "facing the defendant" because the defendant could be defending another. The Committee agreed and deleted those words. Third, Mr. Gutmacher suggested that the word "would" be changed to "could" in the sentence that reads: "….a reasonably cautious and prudent person would have believed that the danger could be avoided only through …." The Committee voted unanimously against this suggestion because it appeared to be too broad to capture the objective standard required by Florida law. Fourth, Mr. Gutmacher suggested adding the words "stopped or" in that same sentence so that it would read: "…a reasonably cautious and prudent person would have believed that the danger could be stopped or avoided only through …." The Committee unanimously disagreed because it thought the existing instruction was sufficient. Fifth, Mr. Gutmacher does not like the format of "(victim)" based on his experience that trial judges actually read the word "victim" instead of inserting the victim's name. The Committee unanimously declined to alter its standard format. Finally, Mr. Gutmacher suggests adding a definition of "aggressor" as a person whose unlawful actions raise a reasonable apprehension in another of imminent attack or criminal conduct by the first person." The Committee unanimously voted against this suggestion and instead decided to track the aggressor statute.

The Committee thanks all of the commentators for taking the time to review the proposals and to suggest improvements.

Respectfully submitted this 1st day of October, 2014.

s/ Judge Jerri Collins_____
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Chair, Supreme Court Committee on
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CERTIFICATE OF SERVICE AND FONT SIZE

I hereby certify that this report has been prepared using Times New Roman 14 point font in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2) and that copies of this report and the appendices have been e-mailed to Assistant Public Defender Glen Gifford at glen.gifford@flpd2.com; to Attorney Jon Gutmacher at floridagunlawyer@aol.com; to Assistant State Attorney Eve Mindele Lewis at ELewis@sao17.state.fl.us; and to Assistant State Attorney Brian Cavanagh at bcavanagh@sao17.state.fl.us, this 1st day of October, 2014.

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