

Bill would broaden right to use deadly force
Plan pits NRA against lawmen

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By Paul Flemming

TALLAHASSEE -- Sen. Durell Peaden wants to make sure people have a right to use deadly force to shoot home intruders without fear of prosecution.

"We're talking about what most folks in my part of the world consider protecting their own," said Peaden, R-Crestview, of his proposed legislation.

As Florida's law reads now, people who use deadly force against someone in their home must be responding to a threat of death or great bodily harm.

Peaden's bill would make any intruder on someone's property -- or a home they're visiting, their RV, car or tent -- a threat that by definition justifies using deadly force. The legislation has got the National Rifle Association -- which wrote the bill -- facing off against lobbyists for prosecutors, police and sheriffs.

The senator cites an Escambia County case in the wake of Hurricane Ivan as an example of the need for change. On Wednesday, Assistant State Attorney David Rimmer concluded no charges should be brought.

In November, 77-year-old James Workman shot and killed a man who entered the trailer where he and his wife were living next to their storm-damaged home. Rimmer's review concluded "Mr. Workman clearly had the lawful right to protect his property, his wife and himself from an intruder. Furthermore, the fact that Mr. Workman fired a shot in the ground demonstrates his caution and restraint."

The National Rifle Association wants to head off even the consideration of prosecuting people like Workman.

"When someone breaks into your home in the middle of the night, you don't know why he's there," said Marion Hammer, a lobbyist for the National Rifle Association. "You don't have time to say, 'Hey Mr. Criminal, are you here to rape me and kill me or are you just here to beat me and steal my jewelry?'"

Prosecutors and cops say it's a solution to a problem that doesn't exist -- that there is no case of someone being prosecuted for use of deadly force when they were protecting their home.

"Anecdotally, nobody in our association has been able to come up with a situation where this is a problem," said Bill Cervone, a Gainesville state attorney who's leading the efforts of the Florida Prosecuting Attorneys Association. "I don't know if it's wise to legislate against something that's a possibility."

Prosecutors, sheriff's and police association objections were enough to delay the first hearing of the bill in a Senate committee this week as lobbyists on both sides try to work out their differences. An identical bill is filed in the House, sponsored by Rep. Dennis Baxley, R-Ocala.

The Florida Sheriffs Association is also concerned about unintended consequences. "If you read (the bill), if you had a little boy or little girl out playing in the yard and they hit a ball into my yard . . . the presumption is in there that he's over there to do harm to me. The other presumption is that I can just go ahead and shoot the kid for fear of my life," said Frank Messersmith, lobbyist for the sheriffs' group.

Prosecutors and law enforcement officers also oppose provisions that make their agencies and them personally liable for financial damages to defendants who are found to be immune from prosecution.

"I'm unaware of any precedent for that," Cervone said. "We are always subject to being sued for excesses. But to make the generalizations that this legislation makes seems to be quite a leap."

The NRA's Hammer said that view represents an unwillingness to take responsibility for prosecutorial mistakes.

"I would like to see them stand up in public and say we're opposed to a bill that allows law-abiding people to protect themselves," Hammer said. "It's just that when they make mistakes they don't want to be held accountable."

Peaden said law enforcement would be quick to figure out what's required of them. "They'll learn," he said.