

By the Committee on Criminal Justice; and Senator Bradley

591-00896-16

2016344c1

1                   A bill to be entitled  
2       An act relating to justifiable use or threatened use  
3       of defensive force; amending s. 776.032, F.S.;  
4       providing legislative findings and intent; providing  
5       for retroactive application; specifying that once a  
6       prima facie claim of self-defense immunity has been  
7       raised, the burden of proof shall be on the party  
8       seeking to overcome the immunity from criminal  
9       prosecution; providing a directive to the Division of  
10      Law Revision and Information; creating s. 939.061,  
11      F.S.; entitling criminal defendants who successfully  
12      claim immunity under s. 776.032, F.S., to an award of  
13      specified costs, attorney fees, and related expenses  
14      if a court makes specified determinations; specifying  
15      a procedure for submitting reimbursement requests;  
16      requiring the Justice Administrative Commission to  
17      review and approve the reimbursement request if the  
18      requested costs, fees, and related expenses are  
19      reasonable and supported by valid documentation;  
20      requiring reimbursements to be paid from the operating  
21      trust fund of the state attorney who prosecuted the  
22      defendant; limiting the amount of the award; providing  
23      an effective date.

24  
25   Be It Enacted by the Legislature of the State of Florida:

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27       Section 1. Section 776.032, Florida Statutes, is amended to  
28   read:

29       776.032 Immunity from criminal prosecution and civil action

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30 for justifiable use or threatened use of force.-

31 (1) The Legislature finds that imposing the burden of proof  
32 on a person who uses or threatens to use defensive force as  
33 permitted by general law at a pretrial evidentiary hearing  
34 substantially curtails the benefit of the immunity from trial  
35 provided by this section. The Legislature intends to make it  
36 explicit that the state shall bear the burden of proof in  
37 establishing beyond a reasonable doubt whether a defendant is  
38 entitled to a prima facie claim of self-defense immunity at a  
39 pretrial evidentiary hearing. The Legislature has never intended  
40 that a person who acts in defense of self, others, or property  
41 be denied immunity and subjected to trial when that person would  
42 be entitled to acquittal at trial. The amendments to this  
43 section made by this act are intended to correct  
44 misinterpretations of legislative intent made by the courts and  
45 shall apply retroactively to proceedings pending at the time  
46 this act becomes a law.

47 (2)~~(1)~~ A person who uses or threatens to use force as  
48 permitted in s. 776.012, s. 776.013, or s. 776.031 is justified  
49 in such conduct and is immune from criminal prosecution and  
50 civil action for the use or threatened use of such force by the  
51 person, personal representative, or heirs of the person against  
52 whom the force was used or threatened, unless the person against  
53 whom force was used or threatened is a law enforcement officer,  
54 as defined in s. 943.10(14), who was acting in the performance  
55 of his or her official duties and the officer identified himself  
56 or herself in accordance with any applicable law or the person  
57 using or threatening to use force knew or reasonably should have  
58 known that the person was a law enforcement officer. As used in

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59 this subsection, the term "criminal prosecution" includes  
60 arresting, detaining in custody, and charging or prosecuting the  
61 defendant.

62 (3)~~(2)~~ A law enforcement agency may use standard procedures  
63 for investigating the use or threatened use of force as  
64 described in subsection (2)~~(1)~~, but the agency may not arrest  
65 the person for using or threatening to use force unless it  
66 determines that there is probable cause that the force that was  
67 used or threatened was unlawful.

68 (4)~~(3)~~ The court shall award reasonable attorney ~~attorney's~~  
69 fees, court costs, compensation for loss of income, and all  
70 expenses incurred by the defendant in defense of any civil  
71 action brought by a plaintiff if the court finds that the  
72 defendant is immune from prosecution as provided in subsection  
73 (2)~~(1)~~.

74 (5) Once a prima facie claim of self-defense immunity from  
75 criminal prosecution has been raised, the burden of proof shall  
76 be on the party seeking to overcome the immunity from criminal  
77 prosecution provided in subsection (2).

78 Section 2. The Division of Law Revision and Information is  
79 directed to replace the phrase "this act" wherever it occurs in  
80 the amendments to s. 776.032, Florida Statutes, made by this  
81 act, with the chapter law number of this act, if it becomes a  
82 law.

83 Section 3. Section 939.061, Florida Statutes, is created to  
84 read:

85 939.061 Motion to dismiss; costs.-

86 (1) If a defendant files, and the court grants, a motion to  
87 dismiss claiming immunity from criminal prosecution under s.

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88 776.032, and the court determines that the state willfully or  
89 substantially violated the rules of discovery or that the  
90 state's filing of an information violates the court's sense of  
91 fundamental fairness, the defendant shall be reimbursed for  
92 court costs, reasonable private attorney fees, and related  
93 expenses incurred in defending the criminal prosecution, up to  
94 the limit specified in subsection (4).

95 (2) To receive reimbursement under this section, a  
96 defendant must submit a written request for reimbursement to the  
97 Justice Administrative Commission within 6 months after the  
98 issuance of the order granting the motion to dismiss. The  
99 defendant must include with the reimbursement request an order  
100 from the court granting the motion to dismiss and documentation  
101 of any court costs or private attorney fees and related expenses  
102 paid or owed.

103 (3) The Justice Administrative Commission shall review each  
104 request and make a determination within 30 days after receiving  
105 the request. If the requested court costs are supported by valid  
106 documentation and the requested private attorney fees and  
107 related expenses are reasonable and supported by valid  
108 documentation, the commission must approve the reimbursement  
109 request. Approved reimbursement requests must be paid to the  
110 defendant from the operating trust fund of the state attorney  
111 who prosecuted the defendant within 60 days after receipt of the  
112 approved reimbursement request.

113 (4) A reimbursement request under this section may not  
114 exceed \$200,000.

115 Section 4. This act shall take effect upon becoming a law.