

<b>Tab 1</b>	<b>CS/SB 344</b> by <b>CJ, Bradley (CO-INTRODUCERS) Dean, Evers, Bean;</b> (Similar to H 0169) Justifiable Use or Threatened Use of Defensive Force
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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**  
**APPROPRIATIONS SUBCOMMITTEE ON CRIMINAL AND**  
**CIVIL JUSTICE**  
**Senator Negrón, Chair**  
**Senator Joyner, Vice Chair**

**MEETING DATE:** Wednesday, November 18, 2015  
**TIME:** 10:00 a.m.—12:00 noon  
**PLACE:** Mallory Horne Committee Room, 37 Senate Office Building

**MEMBERS:** Senator Negrón, Chair; Senator Joyner, Vice Chair; Senators Bradley, Evers, Flores, Hutson, and Soto

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 344</b> Criminal Justice / Bradley (Similar H 169)	Justifiable Use or Threatened Use of Defensive Force; Specifying that once a prima facie claim of self-defense immunity has been raised, the burden of proof shall be on the party seeking to overcome the immunity from criminal prosecution; entitling criminal defendants who successfully claim immunity to an award of specified costs, attorney fees, and related expenses if a court makes specified determinations; requiring reimbursements to be paid from the operating trust fund of the state attorney who prosecuted the defendant, etc.  CJ 10/20/2015 Fav/CS ACJ 11/18/2015 Favorable RC	Favorable Yeas 5 Nays 1

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
<b>Senate Confirmation Hearing:</b> A public hearing will be held for consideration of the below-named executive appointment to the office indicated.			
<b>Secretary of Corrections</b>			
2	Jones, Julie ()	Pleasure of Governor	Recommend Confirm Yeas 6 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
		Review of Local Funding Initiatives	Not Considered
Other Related Meeting Documents			

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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**BILL:** CS/SB 344

**INTRODUCER:** Criminal Justice Committee and Senator Bradley

**SUBJECT:** Justifiable Use or Threatened Use of Defensive Force

**DATE:** November 18, 2015      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Fav/CS</b>
2.	Clodfelter	Sadberry	ACJ	<b>Recommend: Favorable</b>
3.			RC	

**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/SB 344 shifts the burden of proof from the defendant to the prosecution in “justifiable use of force” cases. These new statutory procedures allocate the “beyond a reasonable doubt” evidentiary standard to the prosecution to overcome a defendant’s claim of immunity from criminal prosecution.

The bill contains legislative findings and intent language which include the requirement that the new immunity hearing procedures created in the bill “shall apply retroactively to proceedings pending at the time this act becomes law.”

The bill creates s. 939.061, F.S., which provides that if the court grants the defendant’s motion to dismiss claiming immunity from prosecution, the defendant will be reimbursed for costs, fees, and expenses incurred in defending him or herself in the criminal prosecution up to \$200,000 if the court determines that:

- The prosecution willfully or substantially violated the rules of discovery; or
- The prosecution’s filing of the case violates the court’s sense of fundamental fairness.

Giving the prosecution the burden of proof at the hearing stage could reduce the number of cases that proceed to trial. In theory, these cases would have ultimately resulted in acquittal. Dismissal at the hearing would save the costs and expenses of a trial. Additionally, in exceptional circumstances the prosecuting state attorney’s office could be ordered to reimburse up to a maximum of \$200,000 of a prevailing defendant’s costs, fees, and expenses.

The bill is effective upon becoming law.

## II. Present Situation:

In 2005, when the Legislature expanded certain sections of ch. 776, F.S., which contains the law related to the Justifiable Use of Force (Self Defense), it created a new right to immunity from criminal prosecution or civil action.<sup>1</sup> The law states:

776.032 Immunity from criminal prosecution and civil action for justifiable use or threatened use of force.—

(1) A person who uses or threatens to use force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in such conduct and is immune from criminal prosecution and civil action for the use or threatened use of such force by the person, personal representative, or heirs of the person against whom the force was used or threatened....As used in this subsection, the term “criminal prosecution” includes arresting, detaining in custody, and charging or prosecuting the defendant.

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

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

Immunity from prosecution is different than the defense of justifiable use of force. Essentially, *immunity absolves* a person from criminal liability and the person has no risk of being convicted of the crime for which immunity has been granted.

In contrast, a defendant who is not immune from prosecution and who is presenting the affirmative defense of justifiable use of force is at risk of conviction. The defense of justifiable use of force requires some evidentiary showing to the judge or jury that criminal actions are justifiable and therefore excusable under the law.

### Application of the Immunity Statute

Although s. 776.032, F.S., created immunity from criminal prosecution where a person justifiably uses force, it did not provide any *method* by which the immunity could be conferred. Therefore, it became the responsibility of the courts to craft a way to grant immunity from prosecution in cases where a defendant claims entitlement to immunity under s. 776.032, F.S.

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<sup>1</sup> Section 776.032, F.S.; s. 4, ch. 2005-27, L.O.F.

***Pretrial Evidentiary Hearing on Defendant's Motion to Dismiss the Case Where Defendant has the Burden of Proof***

After many years of litigation the courts developed the following procedure for granting immunity in self defense cases.

During the pretrial process the defendant may file a Motion to Dismiss<sup>2</sup> asking the court to dismiss the case against him or herself because the immunity statute applies to his or her actions. The courts have settled on the more general type of Motion to Dismiss,<sup>3</sup> rejecting the Rule 3.190(c)(4), FL R Cr.P, type of motion described in note 2 below. The trial court is required to conduct an evidentiary hearing on the motion to decide the facts as they relate to immunity.

[T]reating motions to dismiss pursuant to section 776.032 in the same manner as rule 3.190(c)(4) motions would not provide criminal defendants the opportunity to establish immunity and avoid trial that was contemplated by the Legislature. ... We conclude that where a criminal defendant files a motion to dismiss pursuant to section 776.032, the trial court should decide the factual question of the applicability of the statutory immunity.<sup>4</sup>

In *Peterson v. State*, 983 So.2d 27 (Fla. 1st DCA 2008), a case that early-on established the trial court procedures for immunity hearings and that was adopted in three of the other four district courts of appeal, the First District Court determined that:

[A] defendant may raise the question of statutory immunity pretrial and, when such a claim is raised, the trial court must determine whether the defendant has shown by a preponderance of the evidence that the immunity attaches. As noted by the trial court, courts have imposed a similar burden for motions challenging the voluntariness of a confession. *See, e.g., McDole v. State*, 283 So.2d 553, 554 (Fla.1973). We reject any suggestion that the procedure established by rule 3.190(c) should control so as to require denial of a motion whenever a material issue of fact appears.

The case of *Bretherick v. State*, 170 So.3d 766 (Fla. 2015), finally and squarely addressed the issue of the burden of proof in the pretrial evidentiary hearing. In the *Bretherick* case, the court rejected the position that the State must disprove entitlement to immunity beyond a reasonable

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<sup>2</sup> The motion must be sworn to by the moving party. The Florida Rules of Criminal Procedure provide two principal ways of approaching the Motion to Dismiss in a self defense situation.

- Under Rule 3.190(c)(4) the motion can allege that there are no materially disputed facts and that the undisputed facts do not establish a prima facie case of guilt against the defendant. The court is not supposed to decide issues of fact that may exist in a "(c)(4)" motion as the facts should not be materially disputed. (Note: If the State specifically alleges that the material facts are in dispute or that the facts refute the defendant's claim, the motion to dismiss must be denied. *Dennis v. State*, 51 So.3d 456 (Fla. 2010) citing *State v. Kalogeropolous*, 758 So.2d 110, 112 (Fla.2000).)
- Rule 3.190(b) provides for the more general type of Motion to Dismiss.

<sup>3</sup> Rule 3.190(b), FL R Cr. P.

<sup>4</sup> *Dennis v. State*, 51 So.3d 456 (Fla. 2010). See also Defendant's Memorandum on Burden of Proof in *State v. Yaquibie*, 2009 WL 6866287 (Case No. F08-18175, Fla. 11th Jud.Cir., April 29, 2009).

doubt at the pretrial evidentiary hearing. The court approved the *Peterson* court's view that the defendant should bear the burden of proof by a preponderance of the evidence.<sup>5</sup>

### **Justifiable Use of Force as an Affirmative Defense – Procedure; Applicable Burdens of Proof at Trial**

#### ***Trial Procedure***

A criminal defendant can raise and argue the issue of self defense as an affirmative defense<sup>6</sup> to the criminal charges to which such a defense is applicable at a number of points during the criminal process. However, the defense is generally raised during the trial.

If the defendant raises an affirmative defense at trial there must be *some proof presented* upon which the jury can lawfully base a decision on the verdict in the matter. This evidence may come from sources other than the defendant, such as other witnesses or physical evidence.

Because the prosecution has the burden of proof as to guilt, the State presents its evidence first. After the prosecution has presented its case in chief to the jury, the defendant typically moves the court to grant a Judgment of Acquittal finding that the evidence is not sufficient to require any further proceedings such as the defense presenting evidence.

At the point in the proceedings where all of the evidence has been presented, including any evidence offered by the defendant and any rebuttal evidence offered by the prosecution, the defendant typically argues the weaknesses in the prosecution's case and the strength of the self defense evidence to the court, again asking to have the case dismissed with a Judgment of Acquittal.

#### ***Standards of Proof at Trial***

The standard of proof that must be met in order for the court to grant the defendant a Judgment of Acquittal requires the defendant to present a prima facie case of self defense that is not sufficiently rebutted by the prosecution.<sup>7</sup>

We recognize that the question of whether a defendant committed a homicide in justifiable self-defense is ordinarily one for the jury. However, when the State's evidence is legally insufficient to rebut the

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<sup>5</sup> The court reasoned that s. 776.032, F.S., although an immunity provision, is not a blanket immunity, but "rather requires the establishment that the use of force was legally justified." *Bretherick v. State*, 170 So.3d 766 (Fla. 2015). ("A 'preponderance' of the evidence is defined as 'the greater weight of the evidence,' or evidence that 'more likely than not' tends to prove a certain proposition." *Gross v. Lyons*, 763 So. 2d 276, 280 n.1 (Fla. 2000)).

<sup>6</sup> The affirmative defense of justifiable use of force is generally raised by a defendant when there are facts showing that the victim was killed or injured by the criminal act of the defendant *but* the defendant's act was factually and legally justifiable and therefore the defendant is not criminally liable.

<sup>7</sup> The term prima facie evidence is usually used to describe whether the proponent, having the duty to produce evidence, has fulfilled the duty and there is sufficient evidence so that the jury will be allowed to consider the fact or issue. See IX Wigmore, Evidence § 2494 (1940 ed.). See *State v. Rygwelski*, 899 So. 2d 498 (Fla. 2d DCA 2005) (collecting Florida decisions which hold that a statute which provides that certain evidence is prima facie evidence of another fact creates a permissible inference).

defendant's testimony establishing self-defense, the court must grant a motion for judgment of acquittal.<sup>8</sup>

It is important to remember that the burden of proof with regard to the question of the defendant's guilt *never leaves the prosecution*. The burden of proof requires that a defendant's guilt be proven beyond a reasonable doubt.

While the defendant may have the burden of going forward with evidence of self-defense, the burden of proving guilt beyond a reasonable doubt never shifts from the State, and this standard broadly includes the requirement that the State prove that the defendant did not act in self-defense beyond a reasonable doubt.<sup>9</sup>

### Other States

Although other states have justifiable use of force immunity statutes, in deciding the *Bretherick* case, the Florida Supreme Court focused on five states:

#### *Colorado*

Colorado appears to be the first state to pass a law providing for immunity in certain cases of self defense.

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<sup>8</sup> *Fowler v. State*, 921 So.2d 708 (Fla. 4th DCA 2008), citing *State v. Rivera*, 719 So.2d 335, 337 (Fla. 5th DCA 1998); *Sneed v. State*, 580 So.2d 169, 170 (Fla. 4th DCA 1991); and *Hernandez Ramos*, 496 So.2d at 838 (Fla. 2d DCA 1986).

<sup>9</sup> *Brown v. State*, 454 So.2d 596, 598 (Fla. 5th DCA 1984), *superseded by statute on other grounds*, *Thomas v. State*, 918 So.2d 327 (Fla. 1st DCA 2005).

(For a full explanation of what constitutes "reasonable doubt," see Fla. Standard Crim. Jury Instr. 3.7, which is read to the jury at the close of a criminal trial. The instruction states:

The defendant has entered a plea of not guilty. This means you must presume or believe the defendant is innocent. The presumption stays with the defendant as to each material allegation in the [information] [indictment] through each stage of the trial unless it has been overcome by the evidence to the exclusion of and beyond a reasonable doubt.

To overcome the defendant's presumption of innocence, the State has the burden of proving the crime with which the defendant is charged was committed and the defendant is the person who committed the crime.

The defendant is not required to present evidence or prove anything.

Whenever the words "reasonable doubt" are used you must consider the following: A reasonable doubt is not a mere possible doubt, a speculative, imaginary or forced doubt. Such a doubt must not influence you to return a verdict of not guilty if you have an abiding conviction of guilt. On the other hand, if, after carefully considering, comparing and weighing all the evidence, there is not an abiding conviction of guilt, or, if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the charge is not proved beyond every reasonable doubt and you must find the defendant not guilty because the doubt is reasonable.

It is to the evidence introduced in this trial, and to it alone, that you are to look for that proof.

A reasonable doubt as to the guilt of the defendant may arise from the evidence, conflict in the evidence or the lack of evidence.

If you have a reasonable doubt, you should find the defendant not guilty. If you have no reasonable doubt, you should find the defendant guilty.)

In the 1987 case of *People v. Guenther*, 740 P.2d 971 (Colo. 1987), the Colorado Supreme Court found that the immunity statute does not prohibit a district attorney from initiating a criminal prosecution and therefore does not violate Colorado's separation of powers provision in the constitution.<sup>10</sup>

The court also decided that the *burden of proof* at the pretrial immunity hearing should be *upon the defendant*, who is seeking the benefit of the statute, and that he or she should establish by a *preponderance of the evidence* that the statute applies to the facts of the case.<sup>11</sup>

### ***South Carolina***

The South Carolina courts implemented the statutory immunity provision<sup>12</sup> in reliance on the reasoning in the Florida *Dennis* and *Peterson* cases.<sup>13</sup> The South Carolina "Protection of Persons and Property Act" is virtually identical to the Florida statutes.<sup>14</sup>

### ***Georgia***

The Georgia statutes related to self-defense are also virtually identical to the Florida statutes.

The Georgia Supreme Court observed that: "As a potential bar to criminal proceedings which must be determined prior to a trial, immunity represents a far greater right than any encompassed by an affirmative defense, which may be asserted during trial but cannot stop a trial altogether."<sup>15</sup> The Court decided that: "[T]o avoid trial, a *defendant bears the burden* of showing that he is entitled to immunity... by a *preponderance of the evidence*."<sup>16</sup>

### ***Kentucky***

The immunity provision in Kentucky's law is substantially the same as the Florida law.

In *Rodgers v. Commonwealth*, the Kentucky Supreme Court distinguished the immunity statute as being procedural, not substantive.<sup>17</sup> This issue has not been addressed in Florida as it relates to s. 776.032, F.S.

The *Rodgers* court arrived at a different conclusion than Florida, Colorado, South Carolina, or Georgia courts implementing very similar statutes.

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<sup>10</sup> *Id.* at 977. It should be noted that Colorado's statute differs from Florida's in that the Colorado law does not impose a probable cause standard for arresting the defendant (probable cause is the standard for arrest in *any* case), as the Florida statute does. Compare C.R.S.A. 18-1-704.5 with s. 776.032, F.S.

<sup>11</sup> *Id.* at 980-981. Note that the *Peterson* court relied heavily on the Colorado court's reasoning in *Guenther*. *Peterson v. State*, 983 So.2d 27, (Fla. 1st DCA 2008). See also *Dennis v. State*, 51 So.3d 456 (Fla. 2010) which approved *Peterson*.

<sup>12</sup> Code 1976 § 16-11-450, SC ST § 16-11-450.

<sup>13</sup> "[W]e hold that when a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a *preponderance of the evidence*." *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (S.C. 2011).

<sup>14</sup> 2006 Act No. 379, effective June 9, 2006.

<sup>15</sup> *Bunn v. State*, 284 Ga. 410, 667 S.E.2d 605 (Ga. 2008).

<sup>16</sup> *Id.* at 608.

<sup>17</sup> *Rodgers v. Commonwealth*, 285 S.W.3d 740 (Ky. 2009).

Kentucky law differs from the Florida law in that the Kentucky application has *no evidentiary hearing* in matters of immunity, the *burden of proof is on the prosecution*, and the standard of proof is *probable cause* which may be reached by the admission of evidence in the form of witness statements, law enforcement reports, photos, and other documentation.<sup>18</sup>

### ***Kansas***

The Kansas immunity statute was interpreted and implemented to *require the State to negate a claim of immunity* by the *probable cause* standard or proof.<sup>19</sup>

The Florida statute is nearly identical to the Kansas law in that both statutes contain substantially the same phrases:

- “[C]riminal prosecution’ includes arrest, detention in custody and charging or prosecution of the defendant”; and
- A law enforcement agency may use standard procedures for investigating the use or threatened use of force as described in subsection (1), but the agency may not arrest the person for using or threatening to use force unless it determines that there is probable cause that the force that was used ...was unlawful.<sup>20</sup>

However, the Kansas statute contains the following phrase which does *not* appear in the Florida immunity statute:

- A prosecutor may commence a criminal prosecution upon a determination of probable cause.<sup>21</sup>

From this statutory language, the *Ultreras* court inferred that because the only burden and standard of proof mentioned in the Kansas statute rested with the prosecution, the prosecution should bear the burden of showing that the force used by the defendant was not justified “*as part of the probable cause determination*” already required for the issuance of an arrest warrant or summons under Kansas criminal procedures.<sup>22</sup>

In *State v. Hardy*, 51 Kan.App.2d 296, 347 P.3d 222 (Kan.App. 2015) the court determined that the immunity claim should be decided at the time of the Kansas system’s “preliminary hearing” and that the hearing should be evidentiary in nature.<sup>23</sup>

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<sup>18</sup> “Probable cause” means a reasonable ground of suspicion supported by circumstances strong enough to warrant a cautious person to believe that the named suspect is guilty of the charged offense. *Gould v. State*, App. 2 Dist., 974 So.2d 441 (2007).

<sup>19</sup> K.S.A. 21-5231; *State v. Ultreras*, 296 Kan. 828, 295 P.3d 1020 (Kan. 2013).

<sup>20</sup> K.S.A. 21-5231; s. 776.032, F.S.

<sup>21</sup> Compare K.S.A. 21-5231(c) with s. 776.032, F.S.

<sup>22</sup> *State v. Ultreras*, 296 Kan. 828, at 844-845; 295 P.3d 1020 (Kan.2013).

<sup>23</sup> *State v. Hardy*, 51 Kan.App.2d 296, 303; 347 P.3d 222 (Kan.App. 2015). The preliminary hearing seems analogous to Florida’s first appearance hearing at which the court determines whether probable cause supports the defendant’s arrest and any terms of release of the defendant from custody.

### **Reimbursement of Costs, Attorney Fees**

Section 776.032(3), F.S., provides for the award of reasonable attorney’s fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in a civil action brought by a plaintiff if the court finds the defendant immune from prosecution.<sup>24</sup>

The State of Washington allows a defendant who has been found not guilty by reason of self defense (at trial) to be reimbursed for all reasonable costs, including loss of time, legal fees, and other expenses involved in his or her defense. The jury must find the claim of defense was sustained by a preponderance of the evidence and the jury must make specific findings of fact in a special verdict form. The court determines the amount of the reimbursement.<sup>25</sup>

The Washington statute requires “the state of Washington” to make the reimbursement to the defendant, although the claim bill process is cited to in the statute as a possible avenue for additional reimbursement or when no reimbursement at all was ordered by the court.

### **Role of State Attorney (Prosecutor) in the Criminal Justice System**

In Florida the prosecuting attorney makes case filing decisions – whether to file or not, and what charges to file – based upon the prosecutor’s assessment of the evidence known to him or her as it relates to the likelihood of meeting the beyond a reasonable doubt standard of proof.<sup>26</sup> These decisions are discretionary but the elected state attorney is answerable for them.<sup>27</sup>

Case evidence generally comes to the state attorney in the form of sworn law enforcement reports, witness statements, and forensic evidence. Sometimes the suspect or suspects, if they are located by law enforcement, may make a statement. A suspect has the right not to incriminate him or herself, therefore the state attorney may never know the suspect or defendant’s “side of the story.”

### **III. Effect of Proposed Changes:**

The bill amends s. 776.032, F.S., to create a procedure for implementing the justifiable use of force immunity provisions therein. The procedure set forth in the bill differs from the one settled on by the courts in the absence of legislative provisions on the implementation of the 2005 expansion of the justifiable use of force law in Chapter 776 of the Florida Statutes.<sup>28</sup>

<sup>24</sup> See also the identical provision in the Oklahoma statute, 21 Okl.St. Ann. 1289.25.

<sup>25</sup> Washington Statutes 9A.16.110.

<sup>26</sup> For a comprehensive explanation of this process, see Lawson, “A Fresh Cut in an Old Wound – A Critical Analysis of the Trayvon Martin Killing: The Public Outcry, The Prosecutors’ Discretion, and the Stand Your Ground Law,” 23 U.Fla.J.L.&Pub.Pol’y 271 (2012). The article suggests that beyond the legal issues in any given case, there are other factors that may be taken into account in filing decisions.

<sup>27</sup> “In each judicial circuit a state attorney shall be elected for a term of four years.” Article V, Section 17, Florida Constitution.

<sup>28</sup> See *Bretherick v. State*, 170 So.3d 766 (Fla. 2015); *Dennis v. State*, 51 So.3d 456 (Fla. 2010); *Peterson v. State*, 983 So.2d 27 (Fla. 1st DCA 2008).

The bill eliminates a defendant's burden of showing by a preponderance of the evidence<sup>29</sup> that he or she is entitled to immunity from arrest, detention, charges being filed against him or her, or prosecution in a situation where the defendant justifiably used or threatened to use force.

Instead, under the bill, once a defendant has made a prima facie<sup>30</sup> claim of self-defense immunity, the burden falls on the party seeking to overcome the claim. The bill diminishes the defendant's standard of proof because a prima facie claim is a lower standard of proof than the current preponderance of the evidence standard.<sup>31</sup>

The bill limits these allocations of the burden and standard of proof to claims of immunity from criminal prosecution. They do not apply to civil cases that may be brought against a defendant.

The bill requires that once the defendant has made a prima facie claim of immunity, the state bears the burden of proving beyond a reasonable doubt, at a pretrial evidentiary hearing, whether the defendant is entitled to a prima facie claim of self-defense immunity.

The bill contains Legislative findings and intent which include the requirement that the new immunity hearing procedures created in the bill "shall apply retroactively to proceedings pending at the time this act becomes law."

Additionally, the bill creates s. 939.061, F.S., which provides that if the court grants the defendant's motion to dismiss claiming immunity from prosecution, the defendant will be reimbursed for costs, fees, and expenses incurred in defending him or herself in the criminal prosecution up to \$200,000 if the court determines that:

- The prosecution willfully or substantially violated the rules of discovery or
- The prosecution's filing of the case violates the court's sense of fundamental fairness.

The rules of discovery govern the pretrial exchange of information between the prosecution and defense counsel. If the defendant elects to engage in the discovery process, he or she is entitled to receive all of the information upon which the prosecution bases its case and, in exchange, the defendant reciprocates. The information shared during discovery includes reports, witness statements, and findings related to forensic evidence. The prosecution, should it possess such information, is required to turn over evidence or information that might be exculpatory – beneficial to the defendant in some way.<sup>32</sup>

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<sup>29</sup> "A 'preponderance' of the evidence is defined as 'the greater weight of the evidence,' or evidence that 'more likely than not' tends to prove a certain proposition." *Gross v. Lyons*, 763 So. 2d 276, 280 n.1 (Fla. 2000).

<sup>30</sup> Prima facie evidence is that evidence which is legally sufficient to establish a fact or a case unless disproved. <http://www.merriam-webster.com/dictionary/prima%20facie>.

<sup>31</sup> See notes 28 and 29.

<sup>32</sup> FLRCrP 3.220. See *United States v. Lyons*, 352 F.Supp.2d (M.D. FL., 2004) quoting *Berger v. United States*, 295 U.S. 78, 88 (1935): "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnest and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." See also *State v. Carpenter*, 899 So. 2d 1176 (Fla. 3rd, 2005).

The court's "sense of fundamental fairness" could be violated in myriad ways as it relates to the prosecution's filing of its case against a defendant who then seeks immunity under s. 776.032, F.S. For example, the court may determine that the prosecutor's assessment of the evidence against the defendant is indefensible and that the filing of the case violated the defendant's constitutional rights in some manner.<sup>33</sup>

There is no provision for the court to determine the amount of reimbursement, but rather the Justice Administrative Commission must approve and pay the reimbursement based upon valid documentation submitted by the defendant within 60 days of receiving the defendant's request.

The funds to pay the reimbursement claim are required by the bill to come from the operating trust fund of the state attorney who prosecuted the defendant.

The bill directs the Division of Law Revision and Information to replace the phrase "this act" as it appears in the bill with the chapter law number if the bill becomes a law.

The bill is effective upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

#### **Savings Clause**

The bill contains Legislative findings and intent which includes the requirement that the new immunity hearing procedures "shall apply retroactively to proceedings pending at the time this act becomes law." Retroactive application is not generally accepted in criminal justice jurisprudence and this provision in the bill may lead to legal challenges.

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<sup>33</sup> "Included in the Due Process Clause of the Fourteenth Amendment to the United States Constitution is the right of a criminal defendant to a fair trial. (citations omitted) The element of fundamental fairness evades precise definition. The facts of each particular case must be examined in determining whether a criminal defendant's trial was conducted in accordance with the mandates of the Constitution." *Brown v. Wainwright*, 459 F.Supp. 244 ( M. D. FL., 1978). See also Richard Lawrence Daniels, *United States v. Simpson: 'Outrageousness!' What Does It Really Mean? – An Examination of the Outrageous Conduct Defense*, 18 Sw. U. L. Rev. 105, 1988.

Article X, Section 9, of the Florida Constitution provides that “[r]epeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.” This constitutional provision operates as a savings clause to preserve laws in effect at the time of a defendant’s crime that affect prosecution or punishment. It applies to a substantive change in the law.<sup>34</sup>

In apparent recognition of limitations that might be implicated by application of the Savings Clause, the bill includes a statement that it is intended to correct judicial misinterpretation of original legislative intent.

### **Separation of Powers**

The bill’s provision for reimbursement to the defendant whose case is dismissed based on an immunity claim from the prosecuting state attorney’s operating trust fund may be subject to a claim that it violates the separation of powers clause.

This constitutional claim may arise even though the state attorney is not sued individually for reimbursement because it may be argued that his or her prosecutorial discretion is effected due to the “financial threat” to the operation of the state attorney’s office.<sup>35</sup>

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

Under CS/SB 344, in certain circumstances, the court can order that defendants who have their case dismissed must be reimbursed for costs, fees, and expenses up to a maximum of \$200,000. Also, dismissal of a case at hearing will save the costs of defending the case at trial.

<sup>34</sup> See, e.g., *Smiley v. State*, 966 So.2d 330 (Fla. 2007). The law in effect at the time a defendant commits a crime controls prosecution and punishment of the crime and a substantive change in the criminal law that occurs after the commission of the crime cannot be retroactively applied to that crime to affect prosecution or punishment of that crime. See e.g., *Smiley, supra*, and *Castle v. State*, 305 So.2d 794 (Fla. 4th DCA 1974), *affirmed*, 330 So.2d 10 (Fla. 1976).

<sup>35</sup> “The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.” FL CONST Art. 2 § 3. See also *Valdes v. State*, 728 So.2d 736 (Fla. 1999): “Article V, section 17, *specifically provides* that state attorneys are the prosecuting officers of all trials in each circuit. This Court has long held that as the prosecuting officer, the state attorney has “complete discretion” in the decision to charge and prosecute, *Cleveland v. State*, 417 So.2d 653, 654 (Fla.1982), and the judiciary cannot interfere with this “discretionary executive function.” *State v. Bloom*, 497 So.2d 2, 3 (Fla.1986); and *Office of the State Attorney v. Parrotino*, 628 So.2d 1097 (Fla. 1993): “Article V of the Florida Constitution creates the judicial branch of this state, deliberately separating it from and making it coequal to the other branches of government. Article V also creates the office of State Attorney, implying what is obvious—the State Attorneys are quasi-judicial officers....While the legislature has authority to waive immunity for those organs of government within its purview, the legislature cannot take actions that would undermine the independence of Florida’s judicial and quasi-judicial offices. This would violate the doctrine of separation of powers. Art. II, § 3, Fla. Const. For example, subjecting the judiciary and the state’s quasi-judicial officers to punitive lawsuits for official actions obviously would fall into the latter category, because it would impinge upon the independence of these offices.”

**C. Government Sector Impact:**

The change to give the prosecution the burden of proof at the hearing stage could result in a reduction in the number of cases that proceed to trial. In theory, these cases would have ultimately resulted in acquittal. Dismissal at the hearing would save the costs and expenses of a trial.

If a defendant's case is dismissed pursuant to the bill, in exceptional circumstances the prosecuting state attorney's office could be required to reimburse the defendant's costs, fees, and expenses from the office's operating trust fund. Any such court-ordered reimbursement is limited to a maximum of \$200,000.

**VI. Technical Deficiencies:**

As a matter of clarification, it is suggested that the language appearing in the legislative intent/findings – at lines 35-38 – regarding the burdens and standards of proof, and the pretrial evidentiary hearing, could be included in the newly-created subsection (5) of s. 776.032, F.S. The burden falling on the state at a pretrial evidentiary hearing and the standard of proof (beyond a reasonable doubt) are important changes to the current state of the law which will be more readily apparent to practitioners in the new subsection (5).

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 776.032 of the Florida Statutes.

This bill creates section 939.061 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on October 20, 2015:**

Limits the award of costs, fees, and expenses to the defendant who has his or her case dismissed under s. 776.032, F.S., to cases where the court finds:

- The prosecution willfully or substantially violated the rules of discovery; or,
- The prosecution's filing of the case violates the court's sense of fundamental fairness.

**B. Amendments:**

None.

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:

26  
27           Section 1. Section 776.032, Florida Statutes, is amended to  
28           read:

29           776.032 Immunity from criminal prosecution and civil action

591-00896-16

2016344c1

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

591-00896-16

2016344c1

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.

591-00896-16

2016344c1

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.



The Florida Senate

## Committee Agenda Request

**To:** Senator Joe Negron, Chair  
Appropriations Subcommittee on Criminal and Civil Justice

**Subject:** Committee Agenda Request

**Date:** October 23, 2015

---

I respectfully request that **Senate Bill # 344**, relating to Justifiable Use or Threatened Use of Defensive Force, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Rob Bradley", written over a horizontal line.

Senator Rob Bradley  
Florida Senate, District 7

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

November 18, 2015

344

Meeting Date

Bill Number (if applicable)

Topic Justifiable Use of Force

Amendment Barcode (if applicable)

Name Honorable Stacy Scott

Job Title Public Defender, 8th Judicial Circuit

Address 35 North Main Street

Phone 352.338.7370

Street

Gainesville

Florida

32601

Email scotts@pdo8.org

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11-18-15

Meeting Date

SB 344

Bill Number (if applicable)

Topic Burden of Proof

Amendment Barcode (if applicable)

Name Eric Friday

Job Title General Counsel Florida Carry

Address 541 E Monroe St

Phone 904-353-7733

Street

Jacksonville

FL

Email efriday@fletcherand

City

State

Zip

phillips.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Carry

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/18/15  
Meeting Date

SB 344  
Bill Number (if applicable)

Topic Justifiable Use

Amendment Barcode (if applicable)

Name MARTY MONROE

Job Title CITIZEN

Address 6992 ALHAMBRA DR  
Street

Phone \_\_\_\_\_

TALLAHASSEE FL 32317  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing CITIZENS WHO DON'T WANT TO BE SHOT

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/18/15  
Meeting Date

SB 344  
Bill Number (if applicable)

Topic JUSTIFIABLE Use

Amendment Barcode (if applicable)

Name PATTI BRIGHAM

Job Title Gun Safety Chairwoman

Address 614 W King  
Street

Phone 907-797-886

DELANDO 32804  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing LWV F

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/18/15  
Meeting Date

344  
Bill Number (if applicable)

Topic Self-defense immunity.

Amendment Barcode (if applicable)

Name Greg Pound

Job Title \_\_\_\_\_

Address 9166 Sunrise Dr.  
Street

Phone \_\_\_\_\_

Largo Fla. 33773  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Pinellas County Florida Government Corruption

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/18/15  
Meeting Date

SB 344  
Bill Number (if applicable)

Topic Stand Your Ground

Amendment Barcode (if applicable)

Name Buddy Jacobs

Job Title General Counsel Fla. Prosecuting Attorneys Assoc.

Address 961687 Gateway Blvd.  
Street

Phone 904-261-3693

Fernandina Bch FL 32034  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing State Attorneys of Fla.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11-18-15

Meeting Date

Topic BURDEN OF PROOF

Bill Number SB-344  
(if applicable)

Name MARION P. HAMMER

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title \_\_\_\_\_

Address P.O. Box 1387

Phone 850-222-9518

Street

TALLAHASSEE FL 32302

City

State

Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing NRA (NATIONAL RIFLE ASSOCIATION) UNITED SPORTSMEN OF FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

The Florida Senate  
COMMITTEE NOTICE OF HEARING

IN THE FLORIDA SENATE  
TALLAHASSEE, FLORIDA

IN Executive Appointment of  
RE:

Julie Jones

Appointee Name

Secretary of Corrections

Board Name

**NOTICE OF HEARING**

TO: Ms. Julie Jones  
Florida Department of Corrections  
501 South Calhoun Street  
Tallahassee, Florida 32399-2500

YOU ARE HEREBY NOTIFIED that the Appropriations Subcommittee on Criminal and Civil Justice of the Florida Senate will conduct a hearing on your executive appointment on Wednesday, November 18, 2015, in the Mallory Horne Committee Room, 37 Senate Office Building, commencing at 10:00 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.

DATED this the 9th day of 2015.

Appropriations Subcommittee on Criminal  
and Civil Justice



Senator Joe Negron  
As Chair and by authority of the committee

cc: Members, Appropriations Subcommittee on Criminal and Civil Justice  
Office of the Sergeant at Arms

500

**STATE OF FLORIDA  
DEPARTMENT OF STATE  
Division of Elections**

I, Ken Detzner, Secretary of State,  
do hereby certify that

***Julie L. Jones***

is duly appointed

**Secretary,  
Department of Corrections**

for a term beginning on the  
Fourth day of May, A.D., 2015,  
to serve at the pleasure of the Governor  
and is subject to be confirmed by the Senate  
during the next regular session of the Legislature.



*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Twenty-Ninth day of May, A.D., 2015.*

*Ken Detzner*

Secretary of State

DSDE 99 (3/03)

If photocopied or chemically altered, the word "VOID" will appear.

State of Florida appears in small letters across the face of this 8 1/2 x 11 document.



**RICK SCOTT**  
GOVERNOR

RECEIVED  
DEPARTMENT OF STATE  
2015 MAY -8 PM 4:17  
FLORIDA STATE  
DIVISION OF ELECTIONS

May 4, 2015

The Honorable Kenneth W. Detzner  
Secretary of State  
State of Florida  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following reappointment under the provisions of Section 20.315, Florida Statutes:

Secretary Julie Jones

as Secretary of the Department of Corrections, subject to confirmation by the Senate. This appointment is effective May 4, 2015, for a term ending at the pleasure of the Governor.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to be "Rick Scott".

Rick Scott  
Governor

RS/vh

**OATH OF OFFICE**  
(Art. II, § 5(b), Fla. Const.)

RECEIVED  
DEPARTMENT OF STATE  
2015 MAY 22 AM 9:21  
DIVISION OF ELECTIONS  
TALLAHASSEE, FL

STATE OF FLORIDA

County of Leon

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Secretary, Department of Corrections

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Julie Jones  
Signature

Sworn to and subscribed before me this 19<sup>th</sup> day of May

Sharon Rudd  
Signature of Officer Administering Oath or of Notary Public

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known  OR Produced Identification

Type of Identification Produced \_\_\_\_\_



**ACCEPTANCE**

I accept the office listed in the above Oath of Office.

Mailing Address:  Home  Office

\_\_\_\_\_  
Street or Post Office Box

Julie L Jones  
Print name as you desire commission issued

\_\_\_\_\_  
City, State, Zip Code

Julie Jones  
Signature

THE FLORIDA SENATE

# COMMITTEE WITNESS OATH

---

**CHAIR:**

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

**WITNESS'S NAME:** Julie Jones

---

**ANSWER:**

yes

---

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

**COMMITTEE NAME:** Appropriations Subcommittee on Criminal & Civil Justice

---

**DATE:** November 18, 2015

---

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/18/15.

Meeting Date

Bill Number (if applicable)

Topic Confirmation Hearing.

Amendment Barcode (if applicable)

Name Julie Jones.

Job Title Secretary.

Address 501 S. Calhoun ST.

Phone 850-717-3030.

Street

Tallahassee

FL

32399-

City

State

Zip

Email Jones.Julie@mail.oc.state.fl.us

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Dept. of Corrections.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

18 Nov 15

Meeting Date

Bill Number (if applicable)

Topic Confirmation of FDC Secretary

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 204 South Monroe St., Ste. 201

Phone 577-3032

Street

Tall

FL

32301

City

State

Zip

Email

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Fla. Smart Justice Alliance

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/18/15  
Meeting Date

Bill Number (if applicable)

Topic FL Dept Connections

Amendment Barcode (if applicable)

Name Kim Schulte

Job Title Probation Officer

Address 17360 NE 22 Ave  
Street

Phone 305 786 4493

North Miami Beach FL 33160  
City State Zip

Email Schulte@ncpc.org  
core

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11-18-2015  
Meeting Date

Bill Number (if applicable)

Topic Confirmation of Doc Sec. Jones

Amendment Barcode (if applicable)

Name Bill Cervone

Job Title STATE ATTORNEY - 8 CIR

Address 120 W UNIVERSITY AVE  
Street

Phone 352-374-3686

Gainesville FL 32601  
City State Zip

Email cervone@sa08.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Prosecutors Attorneys Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/18/15

Meeting Date

Confirmation  
Bill Number (if applicable)

Topic Secretary of Correction Confirmation Amendment Barcode (if applicable)

Name Greg Pound

Job Title

Address 9166 Sunrise Dr. Phone

Street

Largo Fla 33723

City

State

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against  
(The Chair will read this information into the record.)

Representing Pinellas County Florida Government Corruption

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Bill Number (if applicable)

Topic Julie Jones Confirmation

Amendment Barcode (if applicable)

Name Lisa Henning

Job Title Legislative Director FOP

Address 242 Office Plaza Dr. Phone 850-766-8008

Street

Tallahassee FL 32301

City

State

Zip

Email foplegislative@aol.com

Speaking: For Against Information

Waive Speaking: In Support Against  
(The Chair will read this information into the record.)

Representing Fraternal Order of Police

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations Subcommittee on Criminal and  
Civil Justice, *Vice Chair*  
Appropriations  
Health Policy  
Higher Education  
Judiciary  
Rules

**JOINT COMMITTEE:**  
Joint Legislative Budget Commission

### SENATOR ARTHENIA L. JOYNER

*Democratic Leader*  
19th District

November 18, 2015

Chairman Joe Negron  
Senate Appropriations Subcommittee on Criminal and Civil Justice

Dear Chairman Negron,

Please excuse my absence from today's Appropriations Subcommittee on Criminal and Civil Justice as I am unable to attend.

Sincerely,

A handwritten signature in cursive script that reads "Arthenia L. Joyner".

**REPLY TO:**

- 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: [www.flisenate.gov](http://www.flisenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

# CourtSmart Tag Report

Room: LL 37

Case:

Type:

Caption: Senate Appropriations Subcommittee on Criminal and Civil Justice

Judge:

Started: 11/18/2015 10:02:27 AM

Ends: 11/18/2015 11:55:44 AM Length: 01:53:18

10:02:25 AM Quorum present  
10:03:11 AM Senator Bradley will lead the meeting today  
10:03:22 AM Informal recess to await a quorum  
10:03:55 AM Recording Paused  
10:05:54 AM Recording Resumed  
10:05:57 AM Meeting back to order. Meeting by Senator Flores  
10:06:23 AM Julie Jones confirmation and is sworn in  
10:06:49 AM Sec. Jones addresses the committee  
10:16:56 AM Senator Soto with a series of questions  
10:18:51 AM Julie Jones comments on critical staffing areas  
10:21:14 AM What protocols are in place to discourage some of the bad events that have taken  
10:21:35 AM place?  
10:21:40 AM Now have cameras, audio and visual, rank and file stepping up  
10:23:58 AM Senator Bradley with a series of questions  
10:38:23 AM Senator Bradley asks Tim Sadberry questions  
10:39:27 AM Questions continue with Sec. Jones  
10:40:05 AM Barney Bishop Florida Smart Justice Alliance speaking on behalf of the Sec.  
10:43:33 AM Kim Schultz Officer from North Miami Beach probation officer  
10:45:19 AM Senator Soto with a question  
10:48:20 AM Senator Soto with a question  
10:48:25 AM Senator Negron with a series of questions  
10:52:26 AM Senator Evers with a series of questions  
11:05:35 AM Bill Cervone Florida Prosecuting Attorney's Assoc would like the confirmation  
11:06:14 AM Senator Evers with a question  
11:06:57 AM Greg Pound Pinellas County Florida Government Corruption  
11:09:35 AM Lisa Henney Fraternal Order of Police gives support to Julie Jones  
11:10:46 AM Senator Evers with a question  
11:13:13 AM Secretary Jones has final comments before a vote  
11:17:27 AM Senator Evers with a question  
11:22:27 AM Closing remarks by Julie Jones  
11:22:41 AM Voting on confirmation-approved  
11:23:36 AM Senator Negron with a brief comment regarding the probation officer that spoke  
11:25:23 AM Senator Evers with a comment regarding salaries of probation officers  
11:28:00 AM Senator Negron with a comment on Sec. Jones  
11:29:28 AM SB 344 by Senator Bradley  
11:29:41 AM Senator Bradley explains the bill  
11:30:08 AM Senator Soto with a series of questions  
11:38:59 AM Senator Evers for a motion for vote time certain for 11:57am  
11:39:27 AM Motion adopted  
11:39:35 AM Senator Hutson with a question  
11:40:52 AM Stacy Scott waives in support  
11:41:06 AM Eric Friday waives in support  
11:41:23 AM Marty Monroe waives in opposition  
11:41:44 AM Greg Pound opposed  
11:42:41 AM Buddy Jacobs waives in opposition-He is from the State Attorneys of Florida  
11:43:13 AM Senator Soto with questions  
11:44:04 AM Why are the State Attorneys against this bill?  
11:44:55 AM Marion Hammer-NRA and Unified Sportsman of Florida support the bill  
11:45:16 AM Senator Soto recognized in debate  
11:45:58 AM Senator Negron in debate  
11:52:53 AM Senator Bradley to close  
11:54:24 AM CS/SB 344 favorable

11:55:32 AM Adjourn