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.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 130

INTRODUCER: Senator Simmons

SUBJECT: Use of Deadly Force

DATE: October 7, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Pre-meeting**
2.			CJ	
3.			CA	
4.			RC	
5.				
6.				

I. Summary:

Senate Bill 130 requires local law enforcement agencies to issue guidelines for neighborhood crime watch programs that limit the actions of participants on patrol.

The bill amends the Stand Your Ground law to:

- No longer preclude lawsuits from third parties who are injured by negligent conduct used in self-defense. The bill limits a person's civil immunity to lawsuits filed by the person against whom force was used and his or her personal representative or heirs.
- Clarify that a law enforcement agency may detain a person for questioning when investigating whether the person lawfully used force.

This bill substantially amends the following sections of the Florida Statutes: 30.60, 166.0485, 776.032, and 776.041.

II. Present Situation:

Neighborhood Crime Watch Programs

County sheriffs and municipal police departments may establish neighborhood crime watch programs. The only statutory limit on crime watch programs is that the programs include city or county residents or business owners.[1]

[1] Sections 30.60 and 166.0485, F.S.

Self-defense

The "Castle" Concept
Florida law also absolves a person of a duty to retreat from using deadly force if the person knows or reasonably believes that an unlawful and forcible entry or act of a dwelling, residence, or occupied vehicle was occurring or had occurred.[2] This provision appears to codify and expand what constitutes a "castle" under the common law. Under the common law "Castle Doctrine," a "castle" was limited to a person's home.

Section 776.013(4), F.S., creates a presumption that a person intends to commit an unlawful act using force or violence when that person unlawfully and forcibly enters another person's dwelling, residence, or occupied vehicle. Similarly, s. 776.013(1), F.S., creates a presumption that the person using deadly, defensive force has a reasonable fear of imminent peril of death or great bodily harm.

The presumption that a person intends to commit an unlawful act does not apply if the person against whom force is used:

- Has the right to enter the place, including as an owner or lessee, and if he or she is not subject to a court-ordered injunction or "no contact" order.
- Has custody of and is in the process of legally removing a child or grandchild.
- Is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle for that purpose.
- Is a law enforcement officer acting pursuant to his or her official duty.

Self-defense and Defense of Others (Outside the "Castle")
Florida law absolves a person of a duty to retreat and permits the use of deadly force when the person defends himself or herself or another person under a reasonable belief that deadly force is needed to prevent imminent great bodily harm or death or to prevent the perpetrator from committing a forcible felony.[3]

Self-defense and Defense of Property
Section 776.031, F.S., applies to situations in which a person is on property other than a dwelling, and the person or immediate family legally possesses or has custody of the property. This provision authorizes a person to use non-deadly force to protect personal property and real property other than a dwelling. Additionally, the provision absolves a person of a duty to retreat, and justifies the use of deadly force if the person reasonably believes deadly force is necessary to prevent the commission of a forcible felony.

[2] A dwelling is defined as: a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night. A residence is defined as a dwelling in which a person resides, even temporarily, or visits as an invited guest.[2] A vehicle is defined as a motorized or non-motorized conveyance intended to transport people or property.[2] In addition to extending the concept of a home to other places of shelter, s. 776.013, F.S., extends the "stand your ground" precept beyond a place of habitation altogether provided that a person is attacked while he or she is in a place where he or she has a right to be and is not engaged in unlawful activity.

[3] Section 776.012, F.S.

Limitations on Self-defense Claims by Aggressors
A person who is in the process of committing or escaping after committing a forcible felony is precluded from claiming a justifiable use of force.[4]

The defense is also not available to a person who otherwise qualifies but initially provokes the use of force against himself or herself, unless:

- The force is so great that the person reasonably believes that he or she is in imminent danger of death or great bodily harm and has exhausted every reasonable means other than the use of force which is likely to result in death or great bodily harm; or
- The person physically withdraws in good faith and clearly indicates the desire to withdraw, but the assailant continues or resumes the use of force.[5]

Immunities and Defenses to Legal Actions
A person who uses force as authorized under the Stand Your Ground law is immune from criminal prosecution and any civil action based on the use of force. Immunity from criminal prosecution includes immunity from being arrested, detained in custody, and charged or prosecuted.[6] A defendant to a civil action based on a use of force is entitled to reasonable attorney's fees, court costs, lost income and all expenses related to the defense of the action if the defendant is immune from criminal prosecution for the use of force.[7]

Case Law

Self-defense and Common Law Duty to Retreat
Before the Florida Legislature adopted the Stand Your Ground law in 2005, the state followed the Florida common law that imposed a duty to retreat in self-defense situations. Under Florida common law, a person acting in self-defense outside his or her home or workplace had a "duty to use every reasonable means to avoid the danger, including retreat, prior to using deadly force."[8, 9] This duty is also referred to as a duty to retreat "to the wall."[10] The duty to retreat also applied to both parties in mutual combat and to an initial aggressor.[11] A defender had no duty to retreat before using non-deadly force.[12]

The duty to retreat had not always been a part of the common law. Centuries ago, "any man who was feloniously attacked without provocation could stand his ground *anywhere*, not retreat, and use deadly force if necessary to repel the attacker."[13] The common law predating the Stand Your

[4] Section 776.041(1), F.S.
[5] Section 776.041(2)(a) and (b), F.S.
[6] Section 776.032(1), F.S.
[7] Section 776.032(3), F.S.
[8] *State v. James*, 867 So. 2d 414, 416 (Fla. 3d DCA 2003).
[9] According to *Weiand v. State*, 732 So. 2d 1044, note 4 (Fla. 1999), "a majority of jurisdictions do not impose a duty to retreat before a defendant may resort to deadly force when threatened with death or great bodily harm."
[10] *Weiand v. State*, 732 So. 2d 1044, 1049 (Fla. 1999).
[11] *Pell v. State*, 122 So. 110, 116 (Fla. 1929) and s. 776.041, F.S.
[12] *Weiand*, 732 So. 2d at note 4.
[13] *Cannon v. State*, 464 So. 2d 149, 150 (Fla. 5th DCA 1985) (emphasis original).

Ground law placed a "greater emphasis on the sanctity of life as opposed to chivalry."[14] Similarly, the duty to retreat appeared to stem from the policy that "[h]uman life is precious, and deadly combat should be avoided if at all possible when imminent danger to oneself can be avoided."[15]

Immunity Determination

In 2008, in *Peterson v. State*, the First District Court of Appeal reviewed a first-degree murder case involving a claim of immunity under the Stand Your Ground law.[16] In upholding the trial court's use of a pretrial, adversarial hearing to determine immunity, the appellate court stated that "the Legislature makes clear that it intended to establish a true immunity and not merely an affirmative defense."[17] The court also endorsed the trial court's review of the defendant's motion to dismiss under a showing of a preponderance of the evidence.[18]

In *Dennis v. State*, the Florida Supreme Court upheld the *Peterson* process of determining immunity through a pretrial evidentiary hearing.[19] According to the Court:

> section 776.032 contemplates that a defendant who establishes entitlement to the statutory immunity will not be subjected to trial. Section 776.032(1) expressly grants defendants a substantive right to not be arrested, detained, charged, or prosecuted as a result of the use of legally justified force. The statute does not merely provide that a defendant cannot be convicted as a result of legally justified force.[20]

The Court also recognized that upon denial of a defense motion to dismiss, the defendant still has available the claim of self-defense or Stand Your Ground as an affirmative defense at trial.[21] The Task Force on Citizen Safety and Protection determined that the *Peterson* hearing is an appropriate mechanism to resolve immunity claims.

Arrest and Detention

The Fourth Amendment of the U.S. Constitution provides, in part, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

Fourth Amendment protections are triggered for most stops by law enforcement officers, and law enforcement officers must have a reasonable suspicion that a person has committed, is committing, or is about to commit a crime. The U.S. Supreme Court has long authorized law enforcement to effect a temporary detention or investigatory stop, also known as a *Terry* Stop-and-Frisk, for the purpose of briefly ascertaining information about criminal activity. The seminal case of *Terry v. Ohio* established limits on law enforcement officers in making

[14] *Id.*
[15] *State v. James*, 867 So. 2d 414, 417 (Fla. 3d DCA 2003) (quoting *State v. Bobbitt*, 415 So. 2d 724, 728 (Fla. 1982)).
[16] *Peterson v. State*, 983 So. 2d 27 (Fla. 1st DCA 2008).
[17] *Id*. at 29.
[18] *Id*. at 28.
[19] *Dennis v. State*, 51 So. 3d 456, 464 (Fla. 2010).
[20] *Id*. at 462.
[21] *Id*. at 459.

temporary stops.[22] In so doing, the Court strictly limits the scope of a search and generally disfavors moving a defendant to multiple places for questioning.[23]

Florida codified the *Terry* holding as s. 901.151, F.S., which is known as the "Florida Stop and Frisk Law."[24] The Florida Stop and Frisk Law imposes a reasonableness standard for law enforcement officers to temporarily detain a person. The questions a law enforcement officer may ask are limited to identifying a person's identity and questions designed to elicit information about the suspected criminal activity. Likewise, Florida law prohibits law enforcement officers from moving the person detained as part of a "Stop and Frisk" investigatory stop.

The U.S. Supreme Court makes sharp distinctions between a temporary detention and an arrest for which an officer must have probable cause. Probable cause is a much higher level of suspicion than reasonable suspicion. Probable cause requires that the facts and circumstances known to the officer would warrant a prudent man in believing that an offense has been committed.[25]

Taking a person into custody generally rises to the level of an arrest.[26] Custody does not always mean arrest, however. Regardless, the courts do not typically recognize a cursory, temporary detention as being as restrictive as taking someone into custody.

Task Force

Florida Governor Rick Scott convened a task force, the Task Force on Citizen Safety and Protection, to thoroughly review the state's Stand Your Ground law. The task force held seven public hearings around the state, took testimony, and issued recommendations, detailed in a

[22] *Terry v. Ohio*, 392 U.S. 1 (88 S.Ct. 1868).
[23] *Terry v. Ohio*, 392 U.S. 1 (88 S.Ct. 1868), involved a discovery of unlawfully concealed firearms during a pat down by a law enforcement officer. Here, the Court ruled the search permissible where the law enforcement officer had a reasonable suspicion of criminal activity. In this case, the officers observed defendants engage in a pattern of unusual activity, possibly indicative of preparing to commit a burglary or robbery. The Court also found that the officers conducted a reasonable scope of search by limiting the search to a pat down of outer pockets of clothing. *Id.* at 7 and 29. "The sole justification of the search in the present situation is the protection of the police officer and others nearby, and it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer." *Id.* at 29.
[24] Section 901.151, F.S., provides: "Whenever any law enforcement officer of this state encounters any person under circumstances which reasonably indicate that such person has committed, is committing, or is about to commit a violation of the criminal laws in this state … the office may temporarily detain such person for the purpose of ascertaining the identity of the person temporarily detained and the circumstances surrounding the person's presence abroad which led the officer to believe that the person had committed, was committing, or was about to commit a criminal offense." (Section 901.151 (2), F.S.) This chapter precludes an officer from temporarily detaining a person longer than is reasonably necessary, or from moving the person to another location during the detention. (Section 901.151 (3), F.S.)
[25] *Henry v. United States*, 361 U.S. 98, 102 (80 S. Ct. 168).
[26] *See Caldwell v. State*, 41 So. 3d 188 (Fla. 2010). Here, the Florida Supreme Court reviews the requirement for law enforcement to issue *Miranda* warnings in the context of arrest and custody. "We emphasize that *Miranda* warnings are not required in any police encounter in which the suspect is not placed under arrest or otherwise in custody …" *Id.* at 198. "Because of the very cursory and limited nature of a *Terry* stop, a suspect is not free to leave, yet is not entitled to full custody *Miranda* rights." *Id.* at 199.

report dated February 21, 2013.[27] The task force provided the report to the Governor, President of the Senate, and the Speaker of the House of Representatives.

Although the task force issued a number of recommendations, members concurred in the belief that all persons who are conducting themselves in a lawful manner have the right to defend themselves and to stand their ground when attacked.[28]

Task force members recommended that:

- The Stand Your Ground law apply to all persons, regardless of citizenship status.
- The term "unlawful activity" be defined. Suggested definitions would exclude noncriminal or certain county and municipal ordinance violations or require a temporal nexus between the unlawful activity and the use of force.
- Law enforcement agencies, prosecutors, defense attorneys, and the judiciary have additional training and education to facilitate the uniform and fair application of self-defense law.
- The role of neighborhood crime watch participants be limited to observing, watching, and reporting potential criminal activity.
- Any ambiguity be removed from the definition of the term "criminal prosecution" to enable law enforcement officers to fully investigate cases involving the use of force.
- The Legislature consider whether the immunity provisions of the Stand Your Ground law should preclude innocent, third-party bystanders from filing legal actions.
- The Legislature consider funding further study of the relationship between race, ethnicity, gender, and expanded self-defense laws, as a follow-up to the informal report provided by the University of Florida, Levin College of Law.
- The Legislature review the state's 10-20-Life law to eliminate unintended consequences.[29]

Stand Your Ground Law in other States

At least 22 states adopted some version of the Stand your Ground law. These laws provide that there is no duty to retreat from an attacker in any place in which a person is lawfully present.[30] These states include Alabama, Arizona, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia.[31] Nine

[27] Governor's Task Force on Citizen Safety and Protection, Final Report (Feb. 21, 2013). The task force developed its mission as follows: "The Task Force on Citizen Safety and Protection will review ch. 776, F.S., and its implementation, listen to the concerns and ideas from Floridians, and make recommendations to the Governor and Florida Legislature to ensure the rights of all Floridians and visitors, including the right to feel safe and secure in our state."

[28] *Id.* at 5. "The Task Force concurs with the core belief that all persons … have a right to feel safe and secure in our state. To that end, all persons who are conducting themselves in a lawful manner have a fundamental right to stand their ground and defend themselves from attack with proportionate force in every place they have a lawful right to be."

[29] The final report of the task force is available at: http://www.flgov.com/citizensafety/.

[30] *Self-defense and "Stand Your Ground,"* National Conference of State Legislatures (Aug. 30, 2013). http://www.ncsl.org/issues-research/justice/self-defense-and-stand-your-ground.aspx (last visited Oct. 2, 2013).

[31] Alabama (s. 13A-3-20, 23); Arizona (s. 13-405); Florida (ch. 776, F.S.); Georgia (ss. 16-3-23, 16-3-23-1, 16-3-24); Indiana (s. 35-41-3-2); Kansas (ss. 21-5222, 21-5223, 21-5224, 21-5225, 21-5230); Kentucky (ss. 503.050, 503.055, 503.080); Louisiana (ss. 14:19, 14:20); Michigan (s. 780.972); Mississippi (s. 97-3-15); Montana (s. 45-3-110); Nevada (ss. 200.120, 200.160); New Hampshire (s. 627:4); North Carolina (ss. 14-51.2, 14-51.3); Oklahoma (s. 1289.25); Pennsylvania (title 18,

of these states adopted laws with specific language providing that a person may stand his or her ground.[32]

Civil immunity is available to persons who use self-defense in certain circumstances in at least 22 states. These states include Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Illinois, Kentucky, Louisiana, Maryland, Michigan, Montana, New Hampshire, North Carolina, North Dakota, Oklahoma, Ohio, Pennsylvania, South Carolina, Tennessee, West Virginia, and Wisconsin.

III. Effect of Proposed Changes:

Neighborhood Crime Watch Program Law

The bill requires county sheriffs and municipal police departments to issue reasonable guidelines for operating crime watch programs. The bill requires that the guidelines prohibit participants on patrol from confronting or attempting to apprehend suspicious persons, unless a reasonable person would be authorized or expected to act to assist another person.

Immunity from Criminal Prosecution and Civil Actions

The bill provides that a person who is immune from civil lawsuits is only immune from lawsuits by the person against whom force is used and his or her personal representative or heirs. Therefore, an injured third party is not expressly precluded from filing a civil action against a person who is otherwise immune under the Stand Your Ground law.

The Stand Your Ground law provides that a person who justifiably uses force is immune from criminal prosecution. The term "criminal prosecution is further defined by the law to include "arresting, detaining in custody, and charging or prosecuting the defendant." The bill redefines "criminal prosecution" to require probable cause but appears to apply probable cause for arresting or detaining in custody. As such, the bill may continue to cause confusion about whether probable cause is needed for law enforcement officers to make an investigatory detention. The U.S. Constitution requires law enforcement officers to have probable cause to make an arrest and a reasonable suspicion to make a temporary investigatory detention.

The bill clarifies that aggressors who are not justified in using force in self-defense also do not benefit from immunity from criminal prosecution or civil actions.

This bill takes effect October 1, 2014.

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s. 505); South Carolina (ss. 16-11-440, 16-11-450); South Dakota (s. 22-18-4); Tennessee (s. 39-11-614); Texas (ss. 9.31, 9.32, 9.41, 9.42, 9.43); Utah (ss. 76-2-402, 76-2-405, 76-2-407); West Virginia (s. 55-7-22).

[32] States with self-defense laws with specific stand your ground language are: Alabama (s. 13A-3-23(b)), Florida (s. 776.013, F.S.), Georgia (s. 16-3-23.1), Kansas (s. 21-5320), Kentucky (s. 503.055), Louisiana (s. 14:19), Oklahoma (s. 1289.25), Pennsylvania (title 18, s. 505), and South Carolina (s. 16-11-440(C).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

To the extent that this bill clarifies provisions of the 2005 Stand Your Ground law, a positive fiscal impact may result from clearer and more uniform application of the law.

VI. Technical Deficiencies:

Sections 1 and 2 direct local law enforcement agencies to issue reasonable guidelines for neighborhood crime watch programs. The "***guidelines*** must include, but are not limited to ***prohibiting*** a neighborhood crime watch patrol participant" from engaging in specified conduct. The legal effect of a guideline that prohibits conduct is not clear. An alternative approach may be to require the Department of Law Enforcement to develop a uniform training curriculum for use by local law enforcement agencies.

VII. Related Issues:

In Section 3, lines 75 through 79 of the bill state that a provision of the Stand Your Ground law "does not restrict a law enforcement agency's right and duty to fully and completely investigate the use of force upon which an immunity may be claimed or any event surrounding the use of force." Typically, government officials and agencies are said to have power or authority, and the people are said to have rights. Accordingly, the Legislature may wish to replace "right" with "authority."

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.