

By the Committees on Criminal Justice; and Judiciary; and
Senators Simmons, Smith, and Thompson

591-02737-14

2014130c2

1 A bill to be entitled
2 An act relating to the use of deadly force; amending
3 ss. 30.60 and 166.0485, F.S.; requiring the county
4 sheriff or municipal police department to issue
5 reasonable guidelines for the operation of
6 neighborhood crime watch programs; providing that the
7 guidelines are subject to reasonable exceptions;
8 amending s. 776.032, F.S.; providing that a person who
9 is justified in using force is immune from criminal
10 prosecution and civil action initiated by the person
11 against whom the force was used; revising the
12 definition of the term "criminal prosecution";
13 clarifying that a law enforcement agency retains the
14 authority and duty to fully investigate the use of
15 force upon which an immunity may be claimed; providing
16 that during a pretrial immunity hearing, the state
17 bears the burden of proving by a preponderance of the
18 evidence that the defendant's use of force was not
19 lawful; amending s. 776.041, F.S.; providing that any
20 reason, including immunity, used by an aggressor to
21 justify the use of force is not available to the
22 aggressor under specified circumstances; providing
23 that provocation justifying the use of defensive force
24 must include the use of force or the threat of the use
25 of force; creating s. 776.09, F.S.; providing
26 legislative intent relating to the justifiable use of
27 force; providing an effective date.

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29 Be It Enacted by the Legislature of the State of Florida:

591-02737-14

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Section 1. Section 30.60, Florida Statutes, is amended to read:

30.60 Establishment of neighborhood crime watch programs.—

(1) A county sheriff or municipal police department may establish neighborhood crime watch programs within the county or municipality. The participants of a neighborhood crime watch program shall include, but need not be limited to, residents of the county or municipality and owners of businesses located within the county or municipality.

(2) The county sheriff or municipal police department shall issue reasonable guidelines for the operation of such programs. The guidelines must include, but are not limited to, prohibiting a neighborhood crime watch patrol participant, while on patrol, from confronting or attempting to apprehend a person suspected of improper or unlawful activity, subject, however, to those circumstances in which a reasonable person would be permitted, authorized, or expected to assist another person.

Section 2. Section 166.0485, Florida Statutes, is amended to read:

166.0485 Establishment of neighborhood crime watch programs.—

(1) A county sheriff or municipal police department may establish neighborhood crime watch programs within the county or municipality. The participants of a neighborhood crime watch program shall include, but need not be limited to, residents of the county or municipality and owners of businesses located within the county or municipality.

(2) The county sheriff or municipal police department shall

591-02737-14

2014130c2

59 issue reasonable guidelines for the operation of such programs.
60 The guidelines must include, but are not limited to, prohibiting
61 a neighborhood crime watch patrol participant, while on patrol,
62 from confronting or attempting to apprehend a person suspected
63 of improper or unlawful activity, subject, however, to those
64 circumstances in which a reasonable person would be permitted,
65 authorized, or expected to assist another person.

66 Section 3. Present subsection (1) of section 776.032,
67 Florida Statutes, is amended, subsections (2) and (3) are
68 renumbered as subsections (3) and (4), respectively, and a new
69 subsection (2) is added to that section, to read:

70 776.032 Immunity from criminal prosecution and civil action
71 for justifiable use of force.—

72 (1) A person who uses force as permitted in s. 776.012, s.
73 776.013, or s. 776.031 is justified in using such force and is
74 immune from criminal prosecution and civil action by the person,
75 personal representative, or heirs of the person, against whom
76 force was used for the use of such force, unless the person
77 against whom force was used is a law enforcement officer, as
78 defined in s. 943.10(14), who was acting in the performance of
79 his or her official duties and the officer identified himself or
80 herself in accordance with any applicable law or the person
81 using force knew or reasonably should have known that the person
82 was a law enforcement officer. As used in this subsection, the
83 term "criminal prosecution" includes arresting, taking into
84 custody, or arresting, detaining in custody, and charging or
85 prosecuting the defendant. This subsection does not restrict a
86 law enforcement agency's authority and duty to fully and
87 completely investigate the use of force upon which an immunity

591-02737-14

2014130c2

88 may be claimed or any event surrounding such use of force.

89 (2) A defendant is entitled to an evidentiary hearing on a
90 pretrial motion to dismiss an indictment or information by
91 making a prima facie showing of the justifiable use of force.
92 During the hearing, the state bears the burden of proving by a
93 preponderance of the evidence that the defendant's use of force
94 was not lawful. For purposes of the motion, the judge shall
95 decide all factual disputes relating to the defendant's use of
96 force, but any factual findings are not established for the
97 purposes of any subsequent trial. The defendant's testimony is
98 not admissible in a subsequent hearing or trial except for the
99 purposes of impeachment. The denial of the defendant's motion to
100 dismiss or any factual findings at the hearing do not preclude
101 the defendant from raising any defense or presenting any
102 evidence at trial.

103 Section 4. Section 776.041, Florida Statutes, is amended to
104 read:

105 776.041 Use of force by aggressor.—The justifications
106 justification described in the preceding sections of this
107 chapter, including, but not limited to, the immunity provided
108 for in s. 776.032, are ~~is~~ not available to a person who:

109 (1) Is attempting to commit, committing, or escaping after
110 the commission of, a forcible felony; or

111 (2) Initially provokes the use of force against himself or
112 herself, unless:

113 (a) Such force is so great that the person reasonably
114 believes that he or she is in imminent danger of death or great
115 bodily harm and that he or she has exhausted every reasonable
116 means to escape such danger other than the use of force which is

591-02737-14

2014130c2

117 likely to cause death or great bodily harm to the assailant; or

118 (b) In good faith, the person withdraws from physical
119 contact with the assailant and indicates clearly to the
120 assailant that he or she desires to withdraw and terminate the
121 use of force, but the assailant continues or resumes the use of
122 force.

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124 For purposes of this subsection, provocation must include the
125 use of force or threat of force.

126 Section 5. Section 776.09, Florida Statutes, is created to
127 read:

128 776.09 Justifiable use of force; legislative intent.—The
129 use of force authorized by this chapter is not intended to
130 encourage vigilantism or acts of revenge, authorize the
131 initiation of a confrontation as a pretext to respond with
132 deadly force, or negate a duty to retreat for persons engaged in
133 unlawful mutual combat.

134 Section 6. This act shall take effect October 1, 2014.