

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Mercado offered the following:

**Amendment (with title amendment)**

Between lines 647 and 648, insert:

Section 10. Section 776.032, Florida Statutes, is amended to read:

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

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14 | whom the force was used or threatened, unless the person against  
15 | whom force was used or threatened is a law enforcement officer,  
16 | as defined in s. 943.10(14), who was acting in the performance  
17 | of his or her official duties and the officer identified himself  
18 | or herself in accordance with any applicable law or the person  
19 | using or threatening to use force knew or reasonably should have  
20 | known that the person was a law enforcement officer. As used in  
21 | this subsection, the term "criminal prosecution" means ~~includes~~  
22 | ~~arresting, detaining in custody, and charging or prosecuting the~~  
23 | ~~defendant.~~

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

30 |       (3) The court may ~~shall~~ award reasonable attorney  
31 | ~~attorney's~~ fees, court costs, compensation for loss of income,  
32 | and all expenses incurred by the defendant in defense of any  
33 | civil action brought by a plaintiff if the court finds that the  
34 | defendant is immune from prosecution as provided in subsection  
35 | (1).

36 |       (4) In a criminal prosecution, once a prima facie claim of  
37 | self-defense immunity from criminal prosecution has been raised  
38 | by the defendant at a pretrial immunity hearing, the burden of

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39 proof by clear and convincing evidence is on the party seeking  
40 to overcome the immunity from criminal prosecution provided in  
41 subsection (1).

42 Section 11. Section 776.041, Florida Statutes, is amended  
43 to read:

44 776.041 Use or threatened use of force by aggressor.—The  
45 justification described in the preceding sections of this  
46 chapter is not available to a person who:

47 (1) Is attempting to commit, is committing, or is escaping  
48 after the commission of, a forcible felony; or

49 (2) Initially provokes the use or threatened use of force  
50 against himself or herself; ~~unless:~~

51 ~~(a) Such force or threat of force is so great that the~~  
52 ~~person reasonably believes that he or she is in imminent danger~~  
53 ~~of death or great bodily harm and that he or she has exhausted~~  
54 ~~every reasonable means to escape such danger other than the use~~  
55 ~~or threatened use of force which is likely to cause death or~~  
56 ~~great bodily harm to the assailant; or~~

57 ~~(b) In good faith, the person withdraws from physical~~  
58 ~~contact with the assailant and indicates clearly to the~~  
59 ~~assailant that he or she desires to withdraw and terminate the~~  
60 ~~use or threatened use of force, but the assailant continues or~~  
61 ~~resumes the use or threatened use of force.~~

62 (3) Leaves a place of safety to place himself or herself  
63 in proximity to a situation likely to result in a use of force;

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64 or

65 (4) Pursues an alleged trespasser or assailant after the  
66 alleged trespasser or assailant has withdrawn or when the  
67 incident that gave rise to a previous confrontation has ended.

68 Section 12. Section 776.09, Florida Statutes, is created  
69 to read:

70 776.09 Statewide system for reporting, tracking, and  
71 disseminating information regarding self-defense claims and  
72 claim resolutions.-

73 (1) The Legislature finds that transparency regarding the  
74 outcomes of investigations into claims regarding the justifiable  
75 use of force is vital to the integrity of this state's law  
76 enforcement function and to the public's understanding of  
77 incidents and cases involving any alleged justifiable use of  
78 force. Therefore, it is in the best interests of the residents  
79 of this state to establish a statewide database to track all  
80 justifiable use of force claims made in this state, including  
81 decisions on whether to arrest or prosecute persons who claimed  
82 to have justifiably used force as permitted in this chapter and  
83 the reasons for the decisions.

84 (2) The Department of Law Enforcement shall collect,  
85 process, maintain, and disseminate information and data on all  
86 incidents concerning the alleged justifiable use of force in  
87 this state. The department shall annually report to the  
88 Legislature the information and data in a format and manner

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89 determined by the Legislature.

90 (3) Each law enforcement agency within the state shall  
91 monthly report to the department all incidents and cases in  
92 which a claim regarding the justifiable use of force is raised,  
93 from the time an initial claim is raised through the full  
94 resolution of the claim or case.

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**T I T L E A M E N D M E N T**

98 Remove line 53 and insert:

99 availability of services; amending s. 776.031, F.S.;  
100 authorizing a person to use force, except deadly  
101 force, in the defense of property; authorizing a  
102 person to use deadly force, in the defense of  
103 property, to prevent the imminent commission of a  
104 forcible felony; providing that a person does not have  
105 a duty to retreat if the person is in a certain place;  
106 amending s. 776.032, F.S.; revising the definition of  
107 the term "criminal prosecution"; requiring, rather  
108 than authorizing, a law enforcement agency to  
109 investigate the use of force under certain  
110 circumstances; deleting the provision that prohibits a  
111 law enforcement agency from arresting a person for  
112 using force under certain circumstances; authorizing,  
113 rather than requiring, the court to award attorney

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114 fees, court costs, and other expenses to a defendant  
115 who used force under certain circumstances; amending  
116 s. 776.041, F.S.; deleting the provisions that make  
117 justifiable use of force available to an aggressor who  
118 initially provokes the use of force against himself or  
119 herself; providing additional circumstances in which  
120 justifiable use of force is not available; creating s.  
121 776.09, F.S.; providing legislative findings;  
122 directing the Department of Law Enforcement to  
123 collect, process, maintain, and disseminate  
124 information and data on all incidents concerning the  
125 alleged justifiable use of force in this state;  
126 requiring the department to annually report to the  
127 Legislature the information and data in a format and  
128 manner determined by the Legislature; requiring each  
129 law enforcement agency within the state to monthly  
130 report to the department all incidents and cases in  
131 which a claim regarding the justifiable use of force  
132 is raised; creating s. 790.064, F.S.;

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