

By Senator Thurston

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1                   A bill to be entitled  
2           An act relating to statewide independent counsel;  
3           creating s. 16.63, F.S.; providing legislative intent;  
4           defining terms; creating the Statewide Independent  
5           Counsel Board in the Department of Legal Affairs;  
6           requiring the board to oversee the investigation and  
7           prosecution of officer-involved incidents of deadly  
8           force; providing board membership requirements;  
9           providing requirements of the board; providing for the  
10          term and removal of the statewide independent counsel;  
11          authorizing the statewide independent counsel to hire  
12          or retain individuals for certain purposes, subject to  
13          the approval of the board; providing that the  
14          statewide independent counsel has the sole  
15          prosecutorial jurisdiction over officer-involved  
16          incidents within this state; requiring the independent  
17          counsel to prosecute specified cases upon written  
18          request of the Governor or a state attorney; requiring  
19          the chief law enforcement officer of a law enforcement  
20          agency to notify the board if a law enforcement  
21          officer or a correctional officer is involved in an  
22          officer-involved incident; providing a reporting  
23          requirement for state attorneys; providing an  
24          exception; providing specified grants of authority to  
25          the statewide independent counsel; providing  
26          legislative intent relating to the statewide  
27          independent counsel's investigations; requiring the  
28          statewide independent counsel to commence a criminal  
29          prosecution by complaint, rather than by indictment,

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30 if the independent counsel determines that a  
31 prosecution is warranted; amending s. 776.06, F.S.;  
32 providing that the Office of the Attorney General has  
33 the responsibility to determine whether a use of  
34 deadly force was appropriate if a law enforcement  
35 officer or a correctional officer is involved in an  
36 officer-involved incident; requiring the Attorney  
37 General, in making such determination, to provide for  
38 the independent investigation and prosecution of the  
39 officer-involved incident in accordance with specified  
40 provisions; providing an effective date.

41  
42 Be It Enacted by the Legislature of the State of Florida:

43  
44 Section 1. Section 16.63, Florida Statutes, is created to  
45 read:

46 16.63 Statewide Independent Counsel Board; statewide  
47 independent counsel.—

48 (1) LEGISLATIVE INTENT.—It is the intent of the Legislature  
49 to provide for the independent prosecution of each instance of  
50 the use of deadly force by a law enforcement officer or a  
51 correctional officer and to ensure just, fair, efficient, and  
52 equitable treatment of all instances across this state of the  
53 use of deadly force by a law enforcement officer or a  
54 correctional officer.

55 (2) DEFINITIONS.—As used in this section, the term:

56 (a) "Board" means the Statewide Independent Counsel Board.

57 (b) "Correctional officer" has the same meaning as in s.

58 943.10(2) and (3).

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59 (c) "Deadly force" has the same meaning as in s. 776.06(1)  
60 and (2).

61 (d) "Law enforcement officer" has the same meaning as in s.  
62 943.10(1), (6), and (8).

63 (e) "Officer-involved incident" means the use of deadly  
64 force by a law enforcement officer or a correctional officer  
65 while the officer is on duty or off duty but performing  
66 activities that are within the scope of the officer's law  
67 enforcement or correctional duties which result in the serious  
68 bodily injury or death of another.

69 (f) "Qualified attorney" means an attorney having at least  
70 5 years of experience, with 3 of them being specific federal or  
71 state criminal prosecutorial experience, and a demonstrated  
72 record for honesty and fairness. Such record can be evidenced  
73 through various means, including Florida Bar records, letters of  
74 recommendation, and overall community support.

75 (3) STATEWIDE INDEPENDENT COUNSEL BOARD.—There is created  
76 in the Department of Legal Affairs the Statewide Independent  
77 Counsel Board. The board shall be a separate budget entity as  
78 that term is defined in chapter 216. The board shall oversee the  
79 investigation and prosecution of officer-involved incidents.

80 (a) The board shall consist of the following five members:

81 1. Three public members, at least one of whom has been the  
82 subject of law enforcement officer-initiated use of force or has  
83 a close association with someone who has, and at least one other  
84 who is a person of color;

85 2. A state attorney with experience prosecuting criminal  
86 offenses; and

87 3. A law enforcement officer.

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88 (b) All members shall demonstrate an interest in and be  
89 supportive of maintaining a high-quality, permanent, independent  
90 counsel to investigate and prosecute officer-involved incidents.

91 (c) The board shall:

92 1. Curate and maintain a list of qualified attorneys with  
93 at least 5 years of prosecutorial experience and vote on and  
94 select one qualified attorney from the list every 2 years to  
95 serve as statewide independent counsel;

96 2. Establish the independent counsel's compensation;

97 3. Approve and recommend to the Legislature a budget for  
98 the board and the independent counsel;

99 4. Provide appropriate oversight and supervision for the  
100 independent counsel, including the ability to remove the  
101 independent counsel for just cause;

102 5. Make recommendations to the Legislature regarding  
103 changes in law relating to the responsibilities and jurisdiction  
104 of the independent counsel, and other related matters;

105 6. Meet at least annually, and may meet as often as  
106 necessary to fulfill its duties and responsibilities; and

107 7. Elect a chair from among its members.

108 (d) Board members shall serve 2-year terms. The initial  
109 terms of the law enforcement officer and the state attorney  
110 members shall be 1 year.

111 (e) In no event shall the board or its members interfere  
112 with the discretion, judgment, or zealous advocacy of the  
113 statewide independent counsel in the handling of individual  
114 cases.

115 (4) STATEWIDE INDEPENDENT COUNSEL.—The statewide  
116 independent counsel's term is 2 years. The independent counsel

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117 serves in the unclassified service and may be removed only for  
118 just cause by the board. The independent counsel, subject to the  
119 approval of the board, may hire or retain individuals to assist  
120 in the investigation and prosecution of officer-involved  
121 incidents within this state.

122 (a) The statewide independent counsel has the sole  
123 prosecutorial jurisdiction over officer-involved incidents in  
124 this state. In addition, upon written request of the Governor or  
125 a state attorney, the independent counsel shall prosecute, when  
126 appropriate, cases involving other law enforcement officer- or  
127 correctional officer-initiated use of force incidents.

128 (b) In situations described in paragraph (a), the statewide  
129 independent counsel shall exercise the powers of a state  
130 attorney.

131 (c) The statewide independent counsel is subject to the  
132 same ethical standards as a state attorney. The independent  
133 counsel shall prosecute only those cases that he or she  
134 considers appropriate, based on the independent counsel's  
135 professional judgment and experience.

136 (5) REQUIRED NOTIFICATIONS.—A chief law enforcement officer  
137 of a law enforcement agency shall notify the board if a law  
138 enforcement officer or a correctional officer employed by the  
139 agency is involved in an officer-involved incident. If a state  
140 attorney is aware that an officer-involved incident has occurred  
141 within his or her jurisdiction, the state attorney must  
142 immediately notify the board of the incident unless the state  
143 attorney knows that the board has already been notified.

144 (6) AUTHORITY.—The statewide independent counsel may  
145 conduct hearings at any place in this state; summon and examine

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146 witnesses; require the production of physical evidence; sign an  
147 information, an indictment, and any other official documents;  
148 confer immunity; attend to and serve as the legal advisor to the  
149 statewide grand jury; and exercise such other powers as are  
150 granted to state attorneys by law. The independent counsel may  
151 designate one or more assistants to exercise any such powers.

152 (7) INVESTIGATION.—It is the intent of the Legislature that  
153 in carrying out the duties of this office, the statewide  
154 independent counsel shall, whenever feasible, use sworn  
155 investigators employed by the Department of Law Enforcement and  
156 may request the assistance, where appropriate, of sworn  
157 investigators employed by other law enforcement agencies. The  
158 independent counsel may designate a prosecutorial official from  
159 a judicial circuit other than the judicial circuit in which the  
160 incident occurred to conduct the investigation.

161 (8) COMMENCEMENT OF PROSECUTION BY COMPLAINT AND NOT BY  
162 INDICTMENT.—If, after proper investigation, the statewide  
163 independent counsel determines that a prosecution is warranted  
164 in an officer-involved incident, the independent counsel shall  
165 commence the criminal prosecution by complaint and not by  
166 indictment, regardless of the maximum punishment for the  
167 offense.

168 Section 2. Section 776.06, Florida Statutes, is amended to  
169 read:

170 776.06 Deadly force by a law enforcement or correctional  
171 officer.—

172 (1) As applied to a law enforcement officer or correctional  
173 officer acting in the performance of his or her official duties,  
174 the term "deadly force" means force that is likely to cause

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175 death or great bodily harm and includes, but is not limited to:

176 (a) The firing of a firearm in the direction of the person  
177 to be arrested, even though no intent exists to kill or inflict  
178 great bodily harm; and

179 (b) The firing of a firearm at a vehicle in which the  
180 person to be arrested is riding.

181 (2) (a) The term "deadly force" does not include the  
182 discharge of a firearm by a law enforcement officer or  
183 correctional officer during and within the scope of his or her  
184 official duties which is loaded with a less-lethal munition. As  
185 used in this subsection, the term "less-lethal munition" means a  
186 projectile that is designed to stun, temporarily incapacitate,  
187 or cause temporary discomfort to a person without penetrating  
188 the person's body.

189 (b) A law enforcement officer or a correctional officer is  
190 not liable in any civil or criminal action arising out of the  
191 use of any less-lethal munition in good faith during and within  
192 the scope of his or her official duties.

193 (3) (a) If a law enforcement officer or a correctional  
194 officer is involved in an officer-involved incident as defined  
195 in s. 16.63, the Office of the Attorney General has the  
196 responsibility to determine whether the use of deadly force by  
197 the law enforcement officer was appropriate under subsections  
198 (1) and (2).

199 (b) In making this determination, the Attorney General  
200 shall provide for the independent investigation and prosecution  
201 of the officer-involved incident as provided in s. 16.63.

202 Section 3. This act shall take effect July 1, 2021.