

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Lee, Chair
Senator Soto, Vice Chair

MEETING DATE: Tuesday, October 8, 2013
TIME: 9:30 —11:30 a.m.
PLACE: *Toni Jennings Committee Room, 110 Senate Office Building*

MEMBERS: Senator Lee, Chair; Senator Soto, Vice Chair; Senators Bradley, Gardiner, Joyner, Latvala, Richter, Ring, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 130 Simmons (Compare H 33, S 122)	Use of Deadly Force; Requiring the county sheriff or municipal police department to issue reasonable guidelines for the operation of neighborhood crime watch programs; providing that the guidelines are subject to reasonable exceptions; providing that a person who is justified in using force is immune from criminal prosecution and civil action initiated by the person against whom the force was used; providing that any reason, including immunity, used by an aggressor to justify the use of force is not available to the aggressor under specified circumstances, etc. JU 10/08/2013 Fav/CS Combined - Lead CJ CA RC	Fav/CS with SB 122 Yeas 7 Nays 2
2	SB 122 Smith (Identical H 33, Compare S 130)	Self-defense; Requiring the county sheriff or municipal police to issue reasonable guidelines for the operation of a neighborhood crime watch program; authorizing a person to use force, except deadly force in the defense of property; providing that a person who uses force is immune from civil action brought by the person or persons against whom the force is used; providing that a law enforcement agency's right and duty to fully investigate the use of force upon which the claim of immunity is based is not restricted; directing the Department of Law Enforcement to collect, process, maintain, and disseminate information and data on all incidents concerning the alleged justifiable use of force in this state, etc. JU 10/08/2013 Fav/CS Combined CJ RC	See SB 130

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.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS for SB's 130 & 122

INTRODUCER: Judiciary Committee and Senators Simmons and Smith

SUBJECT: The Use of Deadly Force

DATE: October 10, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Fav/CS
2.	_____	_____	CJ	_____
3.	_____	_____	CA	_____
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB's 130 & 122 require the Department of Law Enforcement to develop a training curriculum for participants in neighborhood crime watch programs. The bill requires local law enforcement agencies to apply the uniform curriculum in training neighborhood crime watch program participants.

The committee substitute 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 maintains the duty to fully investigate whether a person claiming self-defense has lawfully used force.
- Clarify that an aggressor who unjustifiably uses force does not have the benefit of immunity from criminal prosecution or civil actions.

This committee substitute 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

Self-defense

The "Castle" Concept

Section 776.012, F.S., absolves a person of a duty to retreat before 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 duties.

Self-defense and Defense of Others (Outside the "Castle")

Section 776.012, F.S., relieves a person of a duty to retreat in using non-deadly force when the person reasonably believes that the force is needed for defense against a person's imminent use of unlawful force. Deadly force is permitted when the person defends himself or herself or

¹ Sections 30.60 and 166.0485, F.S.

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." Section 776.013(5)(a), F.S. A residence is defined as "a dwelling in which a person resides, even temporarily, or visits as an invited guest." Section 776.013(5)(b), F.S. A vehicle is defined as "a motorized or non-motorized conveyance intended to transport people or property." Section 776.013(5)(c), F.S. In addition to extending the concept of a home to other places of shelter, s. 776.013(3), F.S., extends the right to "stand your ground" 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.

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., 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.⁴

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.⁵

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.⁶

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.⁷ 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.⁸

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

³ Section 776.012, F.S.

⁴ A forcible felony is defined to include the following offenses: "treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual." Section 776.08, F.S.

⁵ Section 776.041(1), F.S.

⁶ Section 776.041(2)(a) and (b), F.S.

⁷ Section 776.032(1), F.S.

⁸ Section 776.032(3), F.S.

use every reasonable means to avoid the danger, including retreat, prior to using deadly force.”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 Before using non-deadly force, however, a defender had no duty to retreat.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 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

⁹ *State v. James*, 867 So. 2d 414, 416 (Fla. 3d DCA 2003). According to *Weiland 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 *Weiland 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 *Weiland*, 732 So. 2d at note 4.

¹³ *Cannon v. State*, 464 So. 2d 149, 150 (Fla. 5th DCA 1985) (emphasis original).

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.

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 officers 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 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 warrant a prudent man in believing that an offense has been committed.²⁵

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. In this case, 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(2), 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 officer 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.” The section 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 (1959).

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 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 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

²⁶ See *Caldwell v. State*, 41 So. 3d 188 (Fla. 2010). In this case, the Florida Supreme Court reviewed the requirement for law enforcement officers to issue *Miranda* warnings in the context of arrest and custody. The Court emphasized 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. “[B]ecause 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, quoting *United States v. Salvo*, 133 F.3d 943, 949 (6th Cir. 1998).

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/>.

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 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 the Department of Law Enforcement to develop a uniform training curriculum for neighborhood crime watch program participants. Local law enforcement agencies must use the curriculum in training patrol participants.

The training must address:

- How to recognize and report suspicious activity;
- Techniques for crime prevention;
- When a crime watch participant is permitted or expected to assist another person;
- When force is unlawful; and
- Behavior that may cause or escalate conflict.

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.

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, 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)).

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” as “with probable cause, arresting, taking into custody, or charging or prosecuting the defendant.” As such, the bill may remove ambiguities which may have been interpreted by some to require law enforcement officers to have probable cause to make an investigatory detention.

The bill further states that the immunity language in the Stand Your Ground law does not negate or lessen a law enforcement agency’s authority and duty to fully investigate whether a person lawfully used force.

The bill clarifies that an aggressor who is not justified in using force will not benefit from immunity from criminal prosecution or civil actions.

The bill takes effect October 1, 2014.

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.

The Department of Law Enforcement will likely incur costs in establishing a uniform curriculum for use by local law enforcement agencies in training neighborhood crime watch participants, but the impact is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on October 8, 2013:

The committee substitute:

- Requires the Department of Law Enforcement (FDLE) to develop a training curriculum for neighborhood crime watch participants, rather than requiring local law enforcement agencies to establish guidelines for crime watch programs, and specifies subject matter to be addressed in the curriculum.
- Revises the definition of “criminal prosecution” used in the section on immunity for justifiable use of force to clarify the distinction between an officer effecting a detention and a custody.

B. Amendments:

None.



516464

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
10/08/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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



516464

12 the county or municipality and owners of businesses located
13 within the county or municipality.

14 (2) The Department of Law Enforcement shall develop a
15 uniform training curriculum for training participants in
16 neighborhood crime watch programs. County sheriffs and municipal
17 police departments shall use the curriculum in training
18 participants of such programs. The training shall address, but
19 need not be limited to, how to recognize and report suspicious
20 or unlawful activity, crime prevention techniques, when a
21 participant in a crime watch program is authorized or expected
22 to assist another person, the unlawful use of force, and conduct
23 that may unreasonably create or escalate a confrontation between
24 a neighborhood watch participant and a person suspected of
25 unlawful activity.

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

28 166.0485 Establishment of neighborhood crime watch
29 programs.—

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

36 (2) The Department of Law Enforcement shall develop a
37 uniform training curriculum for training participants in
38 neighborhood crime watch programs. County sheriffs and municipal
39 police departments shall use the curriculum in training
40 participants of such programs. The training shall address, but



516464

41 need not be limited to, how to recognize and report suspicious
42 or unlawful activity, crime prevention techniques, when a
43 participant in a crime watch program is authorized or expected
44 to assist another person, the unlawful use of force, and conduct
45 that may unreasonably create or escalate a confrontation between
46 a neighborhood watch participant and a person suspected of
47 unlawful activity.

48 Section 3. Subsection (1) of section 776.032, Florida
49 Statutes, is amended to read:

50 776.032 Immunity from criminal prosecution and civil action
51 for justifiable use of force.—

52 (1) A person who uses force as permitted in s. 776.012, s.
53 776.013, or s. 776.031 is justified in using such force and is
54 immune from criminal prosecution and civil action by the person,
55 personal representative, or heirs of the person, against whom
56 force was used for the use of such force, unless the person
57 against whom force was used is a law enforcement officer, as
58 defined in s. 943.10(14), who was acting in the performance of
59 his or her official duties and the officer identified himself or
60 herself in accordance with any applicable law or the person
61 using force knew or reasonably should have known that the person
62 was a law enforcement officer. As used in this subsection, the
63 term "criminal prosecution" includes, with probable cause,
64 arresting, taking into custody, or arresting, ~~detaining in~~
65 ~~eustody,~~ and charging or prosecuting the defendant. This
66 subsection does not restrict a law enforcement agency's
67 authority and duty to fully and completely investigate the use
68 of force upon which an immunity may be claimed or any event
69 surrounding such use of force.



516464

70 Section 4. Section 776.041, Florida Statutes, is amended to
71 read:

72 776.041 Use of force by aggressor.—The justification
73 described in the preceding sections of this chapter, including,
74 but not limited to, the immunity provided for in s. 776.032, is
75 not available to a person who:

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

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

80 (a) Such force is so great that the person reasonably
81 believes that he or she is in imminent danger of death or great
82 bodily harm and that he or she has exhausted every reasonable
83 means to escape such danger other than the use of force which is
84 likely to cause death or great bodily harm to the assailant; or

85 (b) In good faith, the person withdraws from physical
86 contact with the assailant and indicates clearly to the
87 assailant that he or she desires to withdraw and terminate the
88 use of force, but the assailant continues or resumes the use of
89 force.

90 Section 5. This act shall take effect October 1, 2014.

91
92 ===== T I T L E A M E N D M E N T =====

93 And the title is amended as follows:

94 Delete everything before the enacting clause
95 and insert:

96 A bill to be entitled
97 An act relating to the use of deadly force; amending
98 ss. 30.60 and 166.0485, F.S.; directing the Department



516464

99 of Law Enforcement to develop a uniform training
100 curriculum for county sheriffs and municipal police
101 departments to use in training participants in
102 neighborhood crime watch programs; amending s.
103 776.032, F.S.; providing that a person who is
104 justified in using force is immune from criminal
105 prosecution and civil action initiated by the person
106 against whom the force was used; revising the
107 definition of the term "criminal prosecution";
108 clarifying that a law enforcement agency retains the
109 authority and duty to fully investigate the use of
110 force upon which an immunity may be claimed; amending
111 s. 776.041, F.S.; providing that any reason, including
112 immunity, used by an aggressor to justify the use of
113 force is not available to the aggressor under
114 specified circumstances; providing an effective date.

By Senator Simmons

10-00044-14

2014130__

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 right and duty to fully investigate the use of force
 15 upon which an immunity may be claimed; amending s.
 16 776.041, F.S.; providing that any reason, including
 17 immunity, used by an aggressor to justify the use of
 18 force is not available to the aggressor under
 19 specified circumstances; providing an effective date.
 20
 21 Be It Enacted by the Legislature of the State of Florida:
 22
 23 Section 1. Section 30.60, Florida Statutes, is amended to
 24 read:
 25 30.60 Establishment of neighborhood crime watch programs.—
 26 (1) A county sheriff or municipal police department may
 27 establish neighborhood crime watch programs within the county or
 28 municipality. The participants of a neighborhood crime watch
 29 program shall include, but need not be limited to, residents of

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-00044-14

2014130__

30 the county or municipality and owners of businesses located
 31 within the county or municipality.
 32 (2) The county sheriff or municipal police department shall
 33 issue reasonable guidelines for the operation of such programs.
 34 The guidelines must include, but are not limited to, prohibiting
 35 a neighborhood crime watch patrol participant, while on patrol,
 36 from confronting or attempting to apprehend a person suspected
 37 of improper or unlawful activity, subject, however, to those
 38 circumstances in which a reasonable person would be permitted,
 39 authorized, or expected to assist another person.
 40 Section 2. Section 166.0485, Florida Statutes, is amended
 41 to read:
 42 166.0485 Establishment of neighborhood crime watch
 43 programs.—
 44 (1) A county sheriff or municipal police department may
 45 establish neighborhood crime watch programs within the county or
 46 municipality. The participants of a neighborhood crime watch
 47 program shall include, but need not be limited to, residents of
 48 the county or municipality and owners of businesses located
 49 within the county or municipality.
 50 (2) The county sheriff or municipal police department shall
 51 issue reasonable guidelines for the operation of such programs.
 52 The guidelines must include, but are not limited to, prohibiting
 53 a neighborhood crime watch patrol participant, while on patrol,
 54 from confronting or attempting to apprehend a person suspected
 55 of improper or unlawful activity, subject, however, to those
 56 circumstances in which a reasonable person would be permitted,
 57 authorized, or expected to assist another person.
 58 Section 3. Subsection (1) of section 776.032, Florida

Page 2 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-00044-14

2014130__

59 Statutes, is amended to read:

60 776.032 Immunity from criminal prosecution and civil action
61 for justifiable use of force.-

62 (1) A person who uses force as permitted in s. 776.012, s.
63 776.013, or s. 776.031 is justified in using such force and is
64 immune from criminal prosecution and civil action by the person,
65 personal representative, or heirs of the person, against whom
66 force was used for the use of such force, unless the person
67 against whom force was used is a law enforcement officer, as
68 defined in s. 943.10(14), who was acting in the performance of
69 his or her official duties and the officer identified himself or
70 herself in accordance with any applicable law or the person
71 using force knew or reasonably should have known that the person
72 was a law enforcement officer. As used in this subsection, the
73 term "criminal prosecution" includes, with probable cause,
74 arresting or detaining in custody or ~~arresting, detaining in~~
75 custody, and charging or prosecuting the defendant. This
76 subsection does not restrict a law enforcement agency's right
77 and duty to fully and completely investigate the use of force
78 upon which an immunity may be claimed or any event surrounding
79 such use of force.

80 Section 4. Section 776.041, Florida Statutes, is amended to
81 read:

82 776.041 Use of force by aggressor.-The justification
83 described in the preceding sections of this chapter, including,
84 but not limited to, the immunity provided for in s. 776.032, is
85 not available to a person who:

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

Page 3 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-00044-14

2014130__

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

90 (a) Such force is so great that the person reasonably
91 believes that he or she is in imminent danger of death or great
92 bodily harm and that he or she has exhausted every reasonable
93 means to escape such danger other than the use of force which is
94 likely to cause death or great bodily harm to the assailant; or

95 (b) In good faith, the person withdraws from physical
96 contact with the assailant and indicates clearly to the
97 assailant that he or she desires to withdraw and terminate the
98 use of force, but the assailant continues or resumes the use of
99 force.

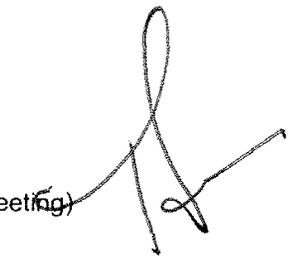
100 Section 5. This act shall take effect October 1, 2014.

Page 4 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE
APPEARANCE RECORD

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



Meeting Date _____

Topic Stand Your Ground Amendments

Bill Number SB 130 ^{Simon} SB 122 ^{Sen Smith}
(if applicable)

Name Kim Keenan

Amendment Barcode _____
(if applicable)

Job Title General Counsel NAACP

Address 4805 Mt Hope Drive

Phone (410) 580-5791

Baltimore, MD
Street City State Zip

E-mail KKeenan@naacpnet.org

Speaking: For Against Information - support bipartisan effort ^{org}

Representing FIA State Conf

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

10/19/13
Meeting Date

Topic Stand Your Ground

Bill Number ~~SB 112~~ SB 112^{EA}
(if applicable)

Name Elijah Armstrong

Amendment Barcode _____
(if applicable)

Job Title Graduate Student/Organizer

Address 1902 Kern Lane
Street

Phone 863-221-5666

Tallahassee FL 32309
City State Zip

E-mail eli5720@hotmail.com

Speaking: For Against Information

Representing Discrim Defenders

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

October 8, 2013

Meeting Date

Topic SELF-DEFENSE

Bill Number 130

Name Honorable Stacy A. Scott

Amendment Barcode 516464
(if applicable)

Job Title Public Defender, 8th Judicial Circuit

Address 35 N. Main Street

Phone 352-338-7370

Street

Gainesville, FL 32601

City

State

Zip

E-mail SCOTT@pd08.org

Speaking: For Against Information

Representing Florida Public Defender

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
APPEARANCE RECORD

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

10/08/2013
Meeting Date

Topic Stand Your Ground

Bill Number 130
(if applicable)

Name Kyleisha Penn

Amendment Barcode _____
(if applicable)

Job Title Student

Address 3169 Allison Marie Ct
Street
Tallahassee, FL 32304
City State Zip

Phone 305.528.6056

E-mail kwp09@my.fsu.edu

Speaking: For Against Information

Representing Dream Defenders

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

10/08/2013
Meeting Date

Topic Stand Your Ground

Bill Number 130
(if applicable)

Name Michael Howard

Amendment Barcode _____
(if applicable)

Job Title Student

Address 624 Eugenia St
Street

Phone 202.427.5192

Tallahassee FL 32310
City State Zip

E-mail michaelhoward58@yahoo.com

Speaking: For Against Information

Representing Dream Defenders

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-8-13

Meeting Date

Topic Stand Your Ground

Bill Number 130
(if applicable)

Name Eric Friday

Amendment Barcode _____
(if applicable)

Job Title Lead Counsel Florida Carry

Address 541 E Monroe St

Phone 904-353-7733

Street

Jacksonville FL 32202

E-mail efriday@fletcherandphillips.com

City

State

Zip

Speaking: For Against Information

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.

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

10.8.2013
Meeting Date

Topic Self Defense

Bill Number SB 130

Name Sherril Lamy Ashley

Amendment Barcode 516464
(if applicable)

Job Title _____

Address 2617 Mahan Drive

Phone (850) 877.2165

Tallahassee FL 32318
Street City State Zip

E-mail _____

Speaking: For Against Information

Representing Florida Sheriffs 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.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-8-13

Meeting Date

Topic SELF DEFENSE

Bill Number 130
(if applicable)

Name MIKE FEWLESS

Amendment Barcode 516454
(if applicable)

Job Title CAPTAIN

Address 2500 W. COLONIAL DRIVE

Phone 407-858-3889

Street
ORLANDO FL 32804
City State Zip

E-mail Mike.Fewless@ocfl.net

Speaking: For Against Information

Representing ORANGE COUNTY SHERIFF'S OFFICE

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

10/8/13

Meeting Date

AMEND #516464

Topic Use of Deadly Force

Bill Number SB 130
(if applicable)

Name Michael Ramage

Amendment Barcode _____
(if applicable)

Job Title General Counsel

Address 2331 Phillips Road

Phone 850-410-7676

Street

Tallahassee

FL

32308

City

State

Zip

E-mail michaelramage@fdle.state.fl.us

Speaking: For Against Information

Representing Florida Department of Law Enforcement

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 APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

10-8-13

Date

SB-130

Bill Number

Name MARION HAMMER

Phone 850-222-9518

Address P.O. Box 1387

E-mail

Street

TALLAHASSEE

FL

32302

Job Title

City

State

Zip

Speaking: For Against Information

Appearing at request of Chair

Subject USE OF FORCE

STRIKE-ALL Amendment

Representing NRA AND UNIFIED SPORTSMEN OF FLORIDA

Lobbyist registered with Legislature: Yes

No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.

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 122

INTRODUCER: Senator Smith

SUBJECT: Self-defense

DATE: October 7, 2013

REVISED: _____

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

I. Summary:

Senate Bill 122 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.
- Make discretionary the requirement in existing law that a court award attorney fees and costs and damages to a defendant in a civil action who is immune from prosecution for the use of force. The bill also allows the court to apportion damages, attorney fees, courts costs, and related expenses on a comparative basis.
- The bill defines additional conduct that makes a person an aggressor and imposes additional limitations on his or her authority to use deadly force in self-defense. Under the bill, a person is an aggressor if he or she:
 - Moves from a place of safety to a place of danger; or
 - Continues to pursue a person or engage in conflict after the incident has ended.

The Department of Law Enforcement (FDLE) is required by the bill to establish a statewide system for reporting, tracking, and distributing information on self-defense claims. Local law enforcement agencies must monthly report information on claims to the FDLE, ranging from initial claims through final resolution.

This bill substantially amends the following sections of the Florida Statutes: 30.60, 166.0485, 776.031, 776.032, and 776.041. The bill also creates section 776.09, Florida Statutes.

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

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.

¹ Sections 30.60 and 166.0485, F.S.

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.² 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.²

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.

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

³ Section 776.012, F.S.

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.

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 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

⁸ *State v. James*, 867 So. 2d 414, 416 (Fla. 3d DCA 2003).

⁹ According to *Weiland 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 *Weiland 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 *Weiland*, 732 So. 2d at note 4.

¹³ *Cannon v. State*, 464 So. 2d 149, 150 (Fla. 5th DCA 1985) (emphasis original).

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.

Task Force on Citizen Safety and Protection determined that the *Peterson* hearing is an appropriate mechanism to resolve immunity claims.

Burden of Proof in Self-defense Cases

In a case where self-defense is asserted as an affirmative defense, the defendant bears the initial burden of presenting a prima facie case of self-defense. Once he or she does so, the burden of proof shifts to the state to rebut that the defendant did not act in self-defense beyond a reasonable doubt.²² At no point in time does the burden shift back to the defendant.

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 temporary stops.²³ In so doing, the Court strictly limits the scope of a search and generally disfavors moving a defendant to multiple places for questioning.²⁴

Florida codified the *Terry* holding as s. 901.151, F.S., which is known as the “Florida Stop and Frisk Law.”²⁵ 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.

²² See *Leasure v. State*, 105 So.3d 5 (Fla. 2d DCA 2012); *Alexander v. State*, 2013 WL 5354419 (Fla. App. 1 Dist.); *Chaffin v. State*, 2013 WL 4081082 (Fla. App. 4 Dist.).

²³ *Terry v. Ohio*, 392 U.S. 1 (88 S.Ct. 1868).

²⁴ *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.

²⁵ 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 officer 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.)

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.²⁶

Taking a person into custody generally rises to the level of an arrest.²⁷ 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 report dated February 21, 2013.²⁸ 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.²⁹

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.

²⁶ *Henry v. United States*, 361 U.S. 98, 102 (80 S. Ct. 168).

²⁷ *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.

²⁸ 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.”

²⁹ *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.”

- 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.³⁰

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.³¹ 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.³² Nine of these states adopted laws with specific language providing that a person may stand his or her ground.³³

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.

³⁰ The final report of the task force is available at: <http://www.flgov.com/citizensafety/>.

³¹ *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).

³² 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, 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).

³³ 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)).

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 refer only to charging or prosecuting a defendant. As such, the bill may remove ambiguities which may have been interpreted by some to require law enforcement officers to have probable cause 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 makes discretionary the requirement in existing law that a court award attorney fees and costs and damages to a defendant in a civil action who is immune from prosecution for the use of force.

The bill also authorizes a court in civil actions relating to the use of force to apportion fault comparatively for purposes of damage awards, attorney fees, court costs, and expenses.

Use of Stand Your Ground by “Aggressors”

The bill defines additional conduct that makes a person an aggressor having additional limitations on his or her authority to use deadly force in self-defense. Under the bill, a person is an aggressor if he or she:

- Moves from a place of safety to one in which a use of force is likely; or
- Pursues an alleged trespasser or assailant after the incident is over or the alleged trespasser or assailant has withdrawn.

This bill deletes language from existing law which allows an initial aggressor to use force in self-defense if:

- The force used by the other person is so great that the initial aggressor reasonably believes he or she is in imminent danger of death or great bodily harm, and the initial aggressor has exhausted every reasonable means to escape other than the use of deadly force; or
- The initial aggressor withdraws in good faith from the other person and clearly indicates the intent to withdraw.

In place of the heightened duty to retreat in existing law, the bill places a burden of proof on an aggressor who uses deadly force to show that:

- The aggressor used force as a last resort;
- The use of force was reasonably necessary to avoid death or great bodily harm to himself or herself; and
- The aggressor took steps to avoid taking a human life.

Statewide Self-defense Claim Database

This bill requires the Florida Department of Law Enforcement (FDLE) to create and maintain a statewide database of self-defense claims. Local law enforcement agencies are required to monthly report to the FDLE all incidents and cases in which justifiable use of force is claimed, from the date of raising the claim through resolution. The FDLE must annually report information in the database to the Florida Legislature.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The portion of this bill which requires local law enforcement agencies to submit data relating to claims of the justifiable use of force to FDLE appear to require counties and municipalities to take actions requiring the expenditure of funds. As such, this bill may possibly be subject to the restrictions on mandates under Article VII, section 18 of the Florida Constitution.

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.

The Department of Law Enforcement (FDLE) indicates a potential significant negative fiscal impact from implementation of this bill, both for the FDLE and local law enforcement agencies.³⁴ The impact would result from requiring the FDLE to establish

³⁴ Florida Department of Law Enforcement, *2014 FDLE Legislative Bill Analysis* (Oct. 1, 2013) (on file with the Senate Judiciary Committee).

and maintain a self-defense claims reporting database. The fiscal impact is indeterminate at this time, however.

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.

In Section 5, lines 162 to 163, the bill provides “An aggressor who uses deadly force bears the burden of proof to establish that ...” and lists various factors. To the extent that this would confuse a jury with thinking that the burden of proof stays with the defendant, the Legislature may wish to modify this language. On lines 169 to 170, the bill requires an aggressor who uses deadly force to establish that “He or she took steps to avoid the necessity of taking a human life.” Deadly force, however, is defined to include force likely to result in great bodily harm.³⁵ Staff recommends adding the term “causing great bodily harm” to this phrase or replacing the “phrase taking human life” with “using deadly force.”

VII. Related Issues:

In Section 4, lines 119 through 122 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.

³⁵ Section 776.06, F.S., defines deadly force as force likely to cause death or great bodily harm.

By Senator Smith

31-00089A-14

2014122__

1 A bill to be entitled
 2 An act relating to self-defense; amending ss. 30.60
 3 and 166.0485, F.S.; requiring the county sheriff or
 4 municipal police to issue reasonable guidelines for
 5 the operation of a neighborhood crime watch program;
 6 requiring the guidelines to include certain specified
 7 conditions; amending s. 776.031, F.S.; authorizing a
 8 person to use force, except deadly force in the
 9 defense of property; authorizing a person to use
 10 deadly force in the defense of property to prevent the
 11 imminent commission of a forcible felony; amending s.
 12 776.032, F.S.; providing that a person who uses force
 13 is immune from civil action brought by the person or
 14 persons against whom the force is used; revising the
 15 definition of the term "criminal prosecution" with
 16 regard to immunity from criminal prosecution and civil
 17 action; providing that a law enforcement agency's
 18 right and duty to fully investigate the use of force
 19 upon which the claim of immunity is based is not
 20 restricted; deleting a provision that prohibits a law
 21 enforcement agency from arresting a person for using
 22 force unless probable cause is found that the force
 23 used was unlawful; authorizing, rather than requiring,
 24 the court to award attorney fees, court costs, and
 25 other expenses to a defendant who used force under
 26 certain circumstances; providing that the court may
 27 apply comparative fault to award damages, attorney
 28 fees, court costs, and expenses to the prevailing
 29 party in certain circumstances; amending s. 776.041,

Page 1 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

31-00089A-14

2014122__

30 F.S.; revising the circumstances under which the
 31 defense of justifiable use of force is unavailable to
 32 an aggressor; establishing a burden of proof for an
 33 aggressor who uses deadly force and specifying the
 34 criteria that must be met in satisfying that burden;
 35 creating s. 776.09, F.S.; providing legislative
 36 findings; directing the Department of Law Enforcement
 37 to collect, process, maintain, and disseminate
 38 information and data on all incidents concerning the
 39 alleged justifiable use of force in this state;
 40 requiring the department to annually report to the
 41 Legislature the information and data in a format and
 42 manner determined by the Legislature; requiring each
 43 law enforcement agency within the state to report
 44 monthly to the department all incidents and cases in
 45 which a claim regarding the justifiable use of force
 46 is raised; providing an effective date.
 47
 48 Be It Enacted by the Legislature of the State of Florida:
 49
 50 Section 1. Section 30.60, Florida Statutes, is amended to
 51 read:
 52 30.60 Establishment of neighborhood crime watch programs.—
 53 (1) A county sheriff or municipal police department may
 54 establish neighborhood crime watch programs within the county or
 55 municipality. The participants of a neighborhood crime watch
 56 program shall include, but need not be limited to, residents of
 57 the county or municipality and owners of businesses located
 58 within the county or municipality.

Page 2 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

31-00089A-14

2014122__

59 (2) The county sheriff or municipal police department shall
 60 issue reasonable guidelines for the operation of such programs.
 61 The guidelines must include, but need not be limited to,
 62 prohibiting a neighborhood crime watch patrol participant who is
 63 on patrol from confronting or attempting to apprehend a person
 64 suspected of improper or unlawful activity except in those
 65 circumstances in which a reasonable person would be permitted,
 66 authorized, or expected to assist another person.

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

69 166.0485 Establishment of neighborhood crime watch
 70 programs.-

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

77 (2) The county sheriff or municipal police department shall
 78 issue reasonable guidelines for the operation of such programs.
 79 The guidelines must include, but need not be limited to,
 80 prohibiting a neighborhood crime watch patrol participant who is
 81 on patrol from confronting or attempting to apprehend a person
 82 suspected of improper or unlawful activity except in those
 83 circumstances in which a reasonable person would be permitted,
 84 authorized, or expected to assist another person.

85 Section 3. Section 776.031, Florida Statutes, is amended to
 86 read:

87 776.031 Use of force in defense of property ~~others;~~

31-00089A-14

2014122__

88 prevention of forcible felony.-A person is justified in the use
 89 of force, except deadly force, against another when and to the
 90 extent that the person reasonably believes that such conduct is
 91 necessary to prevent or terminate the other's trespass on, or
 92 other tortious or criminal interference with, either real
 93 property other than a dwelling or personal property, lawfully in
 94 his or her possession or in the possession of another who is a
 95 member of his or her immediate family or household or of a
 96 person whose property he or she has a legal duty to protect.
 97 However, the person is justified in the use of deadly force only
 98 if he or she reasonably believes that such force is necessary to
 99 prevent the imminent commission of a forcible felony. A person
 100 does not have a duty to retreat if the person is in a place
 101 where he or she has a right to be.

102 Section 4. Section 776.032, Florida Statutes, is amended to
 103 read:

104 776.032 Immunity from criminal prosecution and civil action
 105 for justifiable use of force.-

106 (1) A person who uses force as permitted in s. 776.012, s.
 107 776.013, or s. 776.031 is justified in using such force and is
 108 immune from criminal prosecution and civil action by the person,
 109 personal representative, or heirs of the person, against whom
 110 force was used for the use of such force, unless the person
 111 against whom force was used is a law enforcement officer, as
 112 defined in s. 943.10(14), who was acting in the performance of
 113 his or her official duties and the officer identified himself or
 114 herself in accordance with any applicable law or the person
 115 using force knew or reasonably should have known that the person
 116 was a law enforcement officer. As used in this subsection, the

31-00089A-14

2014122__

117 term "criminal prosecution" means includes arresting, detaining
 118 in custody, and charging or prosecuting the defendant. This
 119 subsection does not restrict a law enforcement agency's right
 120 and duty to fully and completely investigate the use of force
 121 upon which an immunity may be claimed or any event surrounding
 122 such use of force.

123 (2) A law enforcement agency shall ~~may~~ use standard
 124 procedures for investigating the use of force as described in
 125 subsection (1), ~~but the agency may not arrest the person for~~
 126 ~~using force unless it determines that there is probable cause~~
 127 ~~that the force that was used was unlawful.~~

128 (3) The court may ~~shall~~ award reasonable attorney
 129 ~~attorney's~~ fees, court costs, compensation for loss of income,
 130 and all expenses incurred by the defendant in defense of any
 131 civil action brought by a plaintiff if the court finds that the
 132 defendant is immune from prosecution as provided in subsection
 133 (1). If the defendant is not immune from prosecution or civil
 134 action, the court may apply comparative fault to award damages,
 135 attorney fees, court costs, and expenses to the prevailing
 136 party.

137 Section 5. Section 776.041, Florida Statutes, is amended to
 138 read:

139 776.041 Use of force by aggressor.—The justification
 140 described in the preceding sections of this chapter, including,
 141 but not limited to, the immunity established under s. 776.032,
 142 is not available to a person who:

- 143 (1) (a) Is attempting to commit, is committing, or is
 144 escaping after the commission of, a forcible felony; or
 145 (b)(2) Initially provokes the use of force against himself

31-00089A-14

2014122__

146 or herself; ~~unless:~~

147 (a) ~~Such force is so great that the person reasonably~~
 148 ~~believes that he or she is in imminent danger of death or great~~
 149 ~~bodily harm and that he or she has exhausted every reasonable~~
 150 ~~means to escape such danger other than the use of force which is~~
 151 ~~likely to cause death or great bodily harm to the assailant; or~~

152 ~~(b) In good faith, the person withdraws from physical~~
 153 ~~contact with the assailant and indicates clearly to the~~
 154 ~~assailant that he or she desires to withdraw and terminate the~~
 155 ~~use of force, but the assailant continues or resumes the use of~~
 156 ~~force.~~

157 (c) Leaves a place of safety to place himself or herself in
 158 proximity to a situation likely to result in a use of force; or

159 (d) Pursues an alleged trespasser or assailant after the
 160 alleged trespasser or assailant has withdrawn or when the
 161 incident that gave rise to a previous confrontation has ended.

162 (2) An aggressor who uses deadly force bears the burden of
 163 proof to establish that:

164 (a) He or she used every reasonable means within his or her
 165 power and consistent with his or her own safety to avoid the
 166 danger before resorting to the use of force;

167 (b) The use of force was reasonably necessary to avoid
 168 death or great bodily harm to himself or herself; and

169 (c) He or she took steps to avoid the necessity of taking a
 170 human life.

171 (3) For purposes of this section, the force used must be
 172 reasonable, considering all of the circumstances, and the
 173 permitted use of force implies no license for the initiation of
 174 a confrontation or an unreasonable escalation of a confrontation

31-00089A-14

2014122__

175 in progress.

176 (4) In a civil action involving an aggressor, the court may
 177 apply comparative fault in awarding damages to the prevailing
 178 party.

179 Section 6. Section 776.09, Florida Statutes, is created to
 180 read:

181 776.09 Statewide system for reporting, tracking, and
 182 disseminating information regarding self-defense claims and
 183 claim resolution.-

184 (1) The Legislature finds that transparency regarding the
 185 outcomes of investigations into claims regarding the justifiable
 186 use of force is vital to the integrity of this state's law
 187 enforcement function and to the public's understanding of
 188 incidents and cases involving any alleged justifiable use of
 189 force. Therefore, it is in the best interest of the residents of
 190 this state to establish a statewide database to track all
 191 justifiable use of force claims made in this state, including
 192 decisions on whether to arrest or prosecute persons who claim to
 193 have justifiably used force as permitted in this chapter and the
 194 reasons for the decisions.

195 (2) The Department of Law Enforcement shall collect,
 196 process, maintain, and disseminate information and data on all
 197 incidents in this state in which justifiable use of force is
 198 alleged. The department shall annually report to the Legislature
 199 the information and data in a format and manner determined by
 200 the Legislature.

201 (3) Each law enforcement agency within the state shall
 202 report monthly to the department all incidents and cases in
 203 which a claim regarding the justifiable use of force is raised,

Page 7 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

31-00089A-14

2014122__

204 from the time an initial claim is raised through the full
 205 resolution of the claim or case.

206 Section 7. This act shall take effect July 1, 2014.

Page 8 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

CourtSmart Tag Report

Room: EL 110

Caption: Senate Judiciary Committee

Case:

Judge:

Type:

Started: 10/8/2013 9:38:41 AM

Ends: 10/8/2013 11:27:59 AM

Length: 01:49:19

9:38:43 AM Chairman Lee Call meeting to order
9:38:49 AM Roll call by CAA
9:39:08 AM Chairman Lee gave a brief talk regarding SB 130 & SB 122 on agenda
9:42:34 AM SB 130 by Senator Simmons
10:05:27 AM Senator Simmons explains A516464
10:06:03 AM Chairman Lee give a brief remarks
10:06:44 AM Chairman Lee explains that Senator Latvala is the sponsor of A516464
10:07:45 AM Senator Smith gave a brief explanation of A516464
10:12:11 AM Chairman Lee asked for questions
10:12:19 AM Questions by Senator Bradley
10:12:56 AM Senator Simmons responds
10:15:55 AM Senator Smith responds
10:16:43 AM Chairman Lee responds
10:18:36 AM Senator Smith responds
10:18:48 AM Questions by Senator Ring
10:19:12 AM Senator Simmons responds
10:21:16 AM Questions by Senator Ring
10:21:24 AM Senator Smith responds
10:21:53 AM Chairman Lee any questions from Committee Members
10:22:10 AM Chairman Lee welcome other Senators & Representatives to the meeting
10:22:27 AM Question by Senator Thrasher
10:22:43 AM Senator Simmons responds
10:23:41 AM Question by Senator Thrasher
10:23:56 AM Senator Simmons respond
10:24:53 AM Question by Senator Thrasher
10:25:07 AM Senator Simmons respond
10:25:19 AM Chairman Lee respond
10:26:07 AM Question by Senator Soto
10:26:41 AM Senator Simmons respond
10:28:04 AM Chairman Lee responded to Senator Soto's question
10:29:54 AM Question from Senator Soto
10:30:08 AM Senator Simmons respond
10:30:50 AM Questions by Chairman Lee
10:30:58 AM Question by Senator Latvala
10:31:33 AM Senator Thrasher responds to Senator Latvala questions
10:33:07 AM Senator Smith respond
10:34:33 AM Senator Simmons respond
10:36:38 AM Question by Senator Bradley
10:37:03 AM Senator Simmons respond
10:37:35 AM Question by Senator Bradley
10:38:06 AM Question by Senator Ring
10:38:41 AM Senator Simmons respond
10:39:05 AM Senator Smith respond
10:39:38 AM Question by Senator Joyner
10:40:34 AM Chairman Lee respond to the bills
10:42:31 AM Question by Senator Soto
10:42:40 AM Senator Simmons respond
10:43:51 AM Question by Senator Soto
10:44:00 AM Senator Simmons respond
10:44:34 AM Question by Senator Soto
10:44:42 AM Senator Simmons respond
10:44:48 AM Chairman Lee respond

10:44:54 AM Question by Senator Soto
10:45:00 AM Senator Simmons respond
10:45:25 AM Senator Smith respond
10:45:46 AM Question by Senator Soto
10:45:54 AM Senator Simmons respond
10:46:25 AM Question by Chairman Lee
10:46:41 AM Question by Senator Joyner
10:46:53 AM Senator Smith respond
10:47:30 AM Question by Senator Joyner
10:47:41 AM Senator Smith respond
10:48:48 AM Question by Chairman Lee
10:48:59 AM Public Testimony
10:49:19 AM Ms. Kim Keenan, FL State Conference, General Counsel NAACP
10:56:31 AM Mr. Elijah Armstrong, Dream Defenders
10:58:45 AM Ms. Stacy Scott, Public Defender
11:02:11 AM Chairman Lee made a statement regarding Ms. Scott
11:02:59 AM Ms. Kyeisha Penn, Dream Defenders
11:05:19 AM Mr. Michael Howard, Dream Defenders
11:07:19 AM Mr. Eric Friday, Florida Carry, Lead Counsel Florida Curry
11:09:41 AM Question by Senator Soto
11:09:51 AM Mr. Curry respond
11:10:42 AM Question by Senator Soto
11:10:53 AM Mr. Curry respond
11:11:48 AM Question by Senator Soto
11:12:04 AM Mr. Curry respond
11:12:30 AM Sherriff Larry Ashley, FL Sherriff Assn.
11:14:32 AM Question by Chairman Lee
11:15:12 AM Sherriff Ashley respond
11:15:57 AM Mr. Mike Fewless, Captain - Waive Time
11:16:22 AM Mr. Michael Ramage, General Counsel Florida Department Law Enforcement
11:17:13 AM Question by Chairman Lee to Mr. Ramage
11:17:38 AM Mr. Ramage respond
11:19:15 AM Question by Chairman Lee
11:19:21 AM Mr. Ramage respond
11:19:29 AM Ms. Marion Hammer, NRA and Unified Sportsmen of Florida
11:22:19 AM Question by Senator Soto
11:22:25 AM Mr. Hammon respond
11:24:28 AM Chairman Lee asked for any more questions
11:24:40 AM Question by Senator Joyner regarding the bill Introdurers of SB 130 & 122
11:26:02 AM Senator Ring gave a statement regarding the bills
11:26:29 AM Chairman asked for further question or response
11:26:40 AM Chairman Lee Motion to vote on A516464 - Favorable
11:26:58 AM A516464 by Senator Latvala - Favorable
11:27:12 AM CAA call roll on CS/SB's 130 & 122 - Favorable as a CS
11:27:40 AM Motion to adjourn by Senator Thrasher