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 Criminal Justice

BILL:	SB 344
INTRODUCER:	Senator Bradley
SUBJECT:	Justifiable Use or Threatened Use of Defensive Force
DATE:	October 19, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Pre-meeting**
2.			JU	
3.			RC	

I. Summary:

SB 344 shifts the burden of proof from the defendant to the prosecution in "justifiable use of force" cases. These new statutory procedures allocate the "beyond a reasonable doubt" evidentiary standard to the prosecution to overcome a defendant's claim of immunity from criminal prosecution.

The bill contains Legislative findings and intent language which include the requirement that the new immunity hearing procedures created in the bill "shall apply retroactively to proceedings pending at the time this act becomes law."

Additionally, the bill creates s. 939.061, F.S., which provides that if the court grants the defendant's motion to dismiss claiming immunity from prosecution, the defendant will be reimbursed for costs, fees, and expenses incurred in defending him or herself in the criminal prosecution up to $200,000.

The bill is effective upon becoming law.

II. Present Situation:

In 2005, when the Legislature expanded certain sections of ch. 776, F.S., which contains the law related to the Justifiable Use of Force (Self Defense) it created a new right to immunity from criminal prosecution or civil action.[1] The law states:

> 776.032 Immunity from criminal prosecution and civil action for justifiable use or threatened use of force.—

[1] Section 776.032, F.S.; s. 4, ch. 2005-27, L.O.F.

> (1) A person who uses or threatens to use force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in such conduct and is immune from criminal prosecution and civil action for the use or threatened use of such force by the person, personal representative, or heirs of the person against whom the force was used or threatened….As used in this subsection, the term "criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant.
> (2) A law enforcement agency may use standard procedures for investigating the use or threatened use of force as described in subsection (1), but the agency may not arrest the person for using or threatening to use force unless it determines that there is probable cause that the force that was used or threatened was unlawful.
> (3) The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (1).

Immunity from prosecution is different than the defense of justifiable use of force. Essentially, *immunity absolves* a person from criminal liability and the person has no risk of conviction of the crime for which immunity has been granted.

Whereas a defendant who is not immune from prosecution and who is presenting the affirmative defense of justifiable use of force is at risk of conviction, and the defense of justifiable use of force requires some evidentiary showing to the judge or jury that criminal actions are justifiable and therefore excusable under the law.

Application of the Immunity Statute

Although s. 776.032, F.S., created immunity from criminal prosecution where a person justifiably uses force it did not provide any *method* by which the immunity could be conferred. Therefore, it became the responsibility of the courts to craft a way to grant immunity from prosecution in cases where a defendant claims entitlement to immunity under s. 776.032, F.S.

Pretrial Evidentiary Hearing on Defendant's Motion to Dismiss the Case Where Defendant has the Burden of Proof

After many years of litigation the courts developed the following procedure for granting immunity in self defense cases.

During the pretrial process the defendant may file a Motion to Dismiss[2] asking the court to dismiss the case against him or herself because the immunity statute applies to his or her actions.

[2] The motion must be sworn to by the moving party. The Rules of Criminal Procedure provide two principal ways of approaching the Motion to Dismiss in a self defense situation.

- Under Rule 3.190(c)(4) the motion can allege that there are no materially disputed facts and that the undisputed facts do not establish a prima facie case of guilt against the defendant. The court is not supposed to decide issues of fact that may exist in a "(c)(4)" motion as the facts should not be materially disputed. (Note: If the State specifically alleges that the material facts are in dispute or that the facts refute the defendant's claim, the motion to dismiss must be denied. *Dennis v. State*, 51 So.3d 456 (Fla. 2010) citing *State v. Kalogeropolous*, 758 So.2d 110, 112 (Fla.2000).
- Rule 3.190(b) provides for the more general type of Motion to Dismiss.

The courts have settled on the more general type of Motion to Dismiss,[3] rejecting the Rule 3.190(c)(4) type of motion described in note 2 below. The trial court is required to conduct an evidentiary hearing on the motion to decide the facts as they relate to immunity.

> [T]reating motions to dismiss pursuant to section 776.032 in the same manner as rule 3.190(c)(4) motions would not provide criminal defendants the opportunity to establish immunity and avoid trial that was contemplated by the Legislature. … We conclude that where a criminal defendant files a motion to dismiss pursuant to section 776.032, the trial court should decide the factual question of the applicability of the statutory immunity.[4]

In *Peterson v. State*, 983 So.2d 27 (Fla. 1st DCA 2008), a case that early-on established the trial court procedures for immunity hearings and that was adopted in three of the other four district courts of appeal, the First District Court determined that:

> [A] defendant may raise the question of statutory immunity pretrial and, when such a claim is raised, the trial court must determine whether the defendant has shown by a preponderance of the evidence that the immunity attaches. As noted by the trial court, courts have imposed a similar burden for motions challenging the voluntariness of a confession. *See, e.g., McDole v. State*, 283 So.2d 553, 554 (Fla.1973). We reject any suggestion that the procedure established by rule 3.190(c) should control so as to require denial of a motion whenever a material issue of fact appears.

The case of *Bretherick v. State*, 170 So.3d 766 (Fla. 2015), finally and squarely addressed the issue of the burden of proof in the pretrial evidentiary hearing. In the *Bretherick* case the court rejected the position that the State must disprove entitlement to immunity beyond a reasonable doubt at the pretrial evidentiary hearing. The court approved the *Peterson* court's view that the defendant should bear the burden of proof by a preponderance of the evidence.[5]

Justifiable Use of Force as an Affirmative Defense – Procedure; Applicable Burdens of Proof at Trial

Trial Procedure

A criminal defendant can raise and argue the issue of self defense as an affirmative defense[6] to the criminal charges to which such a defense is applicable at a number of points during the criminal process but the defense is generally raised in the trial.

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[3] Rule 3.190(b), FL R Cr. P.

[4] *Dennis v. State*, 51 So.3d 456 (Fla. 2010). See also Defendant's Memorandum on Burden of Proof in *State v. Yaqubie*, 2009 WL 6866287 (Case No. F08-18175, Fla. 11th Jud.Cir., April 29, 2009).

[5] The court reasoned that s. 776.032, F.S., although an immunity provision, is not a blanket immunity, but "rather requires the establishment that the use of force was legally justified." *Bretherick v. State*, 170 So.3d 766 (Fla. 2015). ("A 'preponderance' of the evidence is defined as 'the greater weight of the evidence,' or evidence that 'more likely than not' tends to prove a certain proposition." *Gross v. Lyons*, 763 So. 2d 276, 280 n.1 (Fla. 2000)).

[6] The affirmative defense of justifiable use of force is generally raised by a defendant when there are facts showing that the victim was killed or injured by the criminal act of the defendant *but* the defendant's act was factually and legally justifiable and therefore the defendant is not criminally liable.

If the defendant raises an affirmative defense at trial there must be *some proof presented* upon which the jury can lawfully base a decision on the verdict in the matter. This evidence may come from sources other than the defendant, such as other witnesses or physical evidence.

Because the prosecution has the burden of proof as to guilt, the State presents its evidence first. After the prosecution has presented its case in chief to the jury, the defendant typically moves the court to grant a Judgment of Acquittal finding that the evidence is not sufficient to require any further proceedings such as the defense presenting evidence.

At the point in the proceedings where all of the evidence has been presented, including any evidence offered by the defendant and any rebuttal evidence offered by the prosecution, the defendant typically argues the weaknesses in the prosecution's case and the strength of the self defense evidence to the court, again asking to have the case dismissed with a Judgment of Acquittal.

Standards of Proof at Trial

The standard of proof that must be met in order for the court to grant the defendant a Judgment of Acquittal requires the defendant to present a prima facie case of self defense that is not sufficiently rebutted by the prosecution.[7]

> We recognize that the question of whether a defendant committed a homicide in justifiable self-defense is ordinarily one for the jury. However, when the State's evidence is legally insufficient to rebut the defendant's testimony establishing self-defense, the court must grant a motion for judgment of acquittal.[8]

It is important to remember that the burden of proof with regard to the question of the defendant's guilt *never leaves the prosecution.* The burden of proof requires that a defendant's guilt be proven beyond a reasonable doubt.

> While the defendant may have the burden of going forward with evidence of self-defense, the burden of proving guilt beyond a reasonable doubt never shifts from the State, and this standard broadly includes the requirement that the State prove that the defendant did not act in self-defense beyond a reasonable doubt.[9]

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[7] The term prima facie evidence is usually used to describe whether the proponent, having the duty to produce evidence, has fulfilled the duty and there is sufficient evidence so that the jury will be allowed to consider the fact or issue. See IX Wigmore, Evidence § 2494 (1940 ed.). See State v. Rygwelski, 899 So. 2d 498 (Fla. 2d DCA 2005) (collecting Florida decisions which hold that a statute which provides that certain evidence is prima facie evidence of another fact create a permissible inference).

[8] *Fowler v. State*, 921 So.2d 708 (Fla. 4th DCA 2008), citing *State v. Rivera*, 719 So.2d 335, 337 (Fla. 5th DCA 1998); *Sneed v. State*, 580 So.2d 169, 170 (Fla. 4th DCA 1991); and *Hernandez Ramos*, 496 So.2d at 838 (Fla. 2d DCA 1986).

[9] *Brown v. State*, 454 So.2d 596, 598 (Fla. 5th DCA 1984), *superseded by statute on other grounds, Thomas v. State, 918 So.2d 327 (Fla. 1st DCA 2005).*

(For a full explanation of what constitutes "reasonable doubt," see Fla. Standard Crim. Jury Instr. 3.7, which is read to the jury at the close of a criminal trial. The instruction states:

> The defendant has entered a plea of not guilty. This means you must presume or believe the defendant is innocent. The presumption stays with the defendant as to each material allegation in the [information] [indictment] through

Other States

Although other states have justifiable use of force immunity statutes, in deciding the *Bretherick* case, the Florida Supreme Court focused on these five states:

Colorado

Colorado appears to be the first state to pass a law providing for immunity in certain cases of self defense.

In the 1987 case of *People v. Guenther*, 740 P.2d 971 (Colo. 1987), the Colorado Supreme Court found that the immunity statute does not prohibit a district attorney from initiating a criminal prosecution and therefore does not violate Colorado's separation of powers provision in the constitution.[10]

The court also decided that the *burden of proof* at the pretrial immunity hearing should be *upon the defendant*, who is seeking the benefit of the statute, and that he or she should establish by a *preponderance of the evidence* that the statute applies to the facts of the case.[11]

each stage of the trial unless it has been overcome by the evidence to the exclusion of and beyond a reasonable doubt.

To overcome the defendant's presumption of innocence, the State has the burden of proving the crime with which the defendant is charged was committed and the defendant is the person who committed the crime.

The defendant is not required to present evidence or prove anything.

Whenever the words "reasonable doubt" are used you must consider the following: A reasonable doubt is not a mere possible doubt, a speculative, imaginary or forced doubt. Such a doubt must not influence you to return a verdict of not guilty if you have an abiding conviction of guilt. On the other hand, if, after carefully considering, comparing and weighing all the evidence, there is not an abiding conviction of guilt, or, if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the charge is not proved beyond every reasonable doubt and you must find the defendant not guilty because the doubt is reasonable.

It is to the evidence introduced in this trial, and to it alone, that you are to look for that proof.

A reasonable doubt as to the guilt of the defendant may arise from the evidence, conflict in the evidence or the lack of evidence.

If you have a reasonable doubt, you should find the defendant not guilty. If you have no reasonable doubt, you should find the defendant guilty.)

[10] *Id*. at 977. It should be noted that Colorado's statute differs from Florida's in that the Colorado law does not impose a probable cause standard for arresting the defendant (probable cause is the standard for arrest in *any* case), as the Florida statute does. Compare C.R.S.A. 18-1-704.5 with s. 776.032, F.S.

[11] *Id*. at 980-981. Note that the *Peterson* court relied heavily on the Colorado court's reasoning in *Guenther*. *Peterson v. State*, 983 So.2d 27, (Fla. 1st DCA 2008). See also *Dennis v. State*, 51 So.3d 456 (Fla. 2010) which approved *Peterson*.

South Carolina

The South Carolina courts implemented the statutory immunity provision[12] in reliance on the reasoning in the Florida *Dennis* and *Peterson* cases.[13] The South Carolina "Protection of Persons and Property Act" is virtually identical to the Florida statutes.[14]

Georgia

The Georgia statutes related to self defense are also virtually identical to the Florida statutes.

The Georgia Supreme Court observed that: "As a potential bar to criminal proceedings which must be determined prior to a trial, immunity represents a far greater right than any encompassed by an affirmative defense, which may be asserted during trial but cannot stop a trial altogether."[15]

The Court decided that: "[T]o avoid trial, a *defendant bears the burden* of showing that he is entitled to immunity… by a *preponderance of the evidence*."[16]

Kentucky

The immunity provision in Kentucky's law is substantially the same as the Florida law.

In *Rodgers v. Commonwealth*, the Kentucky Supreme Court distinguished the immunity statute as being procedural, not substantive.[17] This issue has not been addressed in Florida as it relates to s. 776.032, F.S.

The *Rodgers* court arrived at a different conclusion than Florida, Colorado, South Carolina, or Georgia courts implementing very similar statutes.

Kentucky law differs from the Florida law in that the Kentucky application has *no evidentiary hearing* in matters of immunity, the *burden of proof is on the prosecution,* and the standard of proof is *probable cause* which may be reached by the admission of evidence in the form of witness statements, law enforcement reports, photos, and other documentation.[18]

Kansas

Likewise, the Kansas immunity statute was interpreted and implemented to *require the State to negate a claim of immunity* by the *probable cause* standard or proof.[19]

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[12] Code 1976 § 16-11-450, SC ST § 16-11-450.
[13] [W]e hold that when a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a *preponderance of the evidence*. *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (S.C. 2011).
[14] 2006 Act No. 379, effective June 9, 2006.
[15] *Bunn v. State*, 284 Ga. 410, 667 S.E.2d 605 (Ga. 2008).
[16] *Id*. at 608.
[17] *Rodgers v. Commonwealth*, 285 S.W.3d 740 (Ky. 2009).
[18] "Probable cause" means a reasonable ground of suspicion supported by circumstances strong enough to warrant a cautious person to believe that the named suspect is guilty of the charged offense. *Gould v. State*, App. 2 Dist., 974 So.2d 441 (2007).
[19] K.S.A. 21-5231; *State v. Ultreras*, 296 Kan. 828, 295 P.3d 1020 (Kan. 2013).

The Florida statute is nearly identical to the Kansas law in that both statutes contain substantially the same phrases:

- "'[C]riminal prosecution' includes arrest, detention in custody and charging or prosecution of the defendant"; and
- A law enforcement agency may use standard procedures for investigating the use or threatened use of force as described in subsection (1), but the agency may not arrest the person for using or threatening to use force unless it determines that there is probable cause that the force that was used …was unlawful.[20]

However, the Kansas statute contains the following phrase which does *not* appear in the Florida immunity statute:

- A prosecutor may commence a criminal prosecution upon a determination of probable cause.[21]

From this statutory language, the *Ultreras* court inferred that because the only burden and standard of proof mentioned in the Kansas statute rested with the prosecution, the prosecution should bear the burden of showing that the force used by the defendant was not justified *"as part of the probable cause determination"* already required for the issuance of an arrest warrant or summons under Kansas criminal procedures.[22]

In *State v. Hardy*, 51 Kan.App.2d 296, 347 P.3d 222 (Kan.App. 2015) the court determined that the immunity claim should be decided at the time of the Kansas system's "preliminary hearing" and that the hearing should be evidentiary in nature.[23]

Reimbursement of Costs, Attorney Fees

Section 776.032(3), F.S., provides for the award of reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in a civil action brought by a plaintiff if the court finds the defendant immune from prosecution.[24]

The State of Washington, at Wa.St. 9A.16.110, allows for a defendant who has been found not guilty by reason of self defense (at trial) to be reimbursed for all reasonable costs, including loss of time, legal fees, and other expenses involved in his or her defense. The jury must find the claim of defense was sustained by a preponderance of the evidence and the jury must make specific findings of fact in a special verdict form. The court determines the amount of the reimbursement.

The Washington statute requires "the state of Washington" to make the reimbursement to the defendant, although the claim bill process is cited to in the statute as a possible avenue for additional reimbursement or when no reimbursement at all was ordered by the court.

[20] K.S.A. 21-5231; s. 776.032, F.S.
[21] Compare K.S.A. 21-5231(c) with s. 776.032, F.S.
[22] *State v. Ultreras*, 296 Kan. 828, at 844-845; 295 P.3d 1020 (Kan.2013).
[23] *State v. Hardy*, 51 Kan.App.2d 296, 303; 347 P.3d 222 (Kan.App. 2015). The preliminary hearing seems analogous to Florida's first appearance hearing at which the court determines whether probable cause supports the defendant's arrest and any terms of release of the defendant from custody.
[24] See also the identical provision in the Oklahoma statute, 21 Okl.St.Ann. 1289.25.

Role of State Attorney (Prosecutor) in the Criminal Justice System

In Florida the prosecuting attorney makes case filing decisions – whether to file or not, and what charges to file – based upon the prosecutor's assessment of the evidence known to him or her as it relates to the likelihood of meeting the beyond a reasonable doubt standard of proof.[25] These decisions are discretionary but the elected state attorney is answerable for them.[26]

Case evidence generally comes to the state attorney in the form of sworn law enforcement reports, witness statements, and forensic evidence. Sometimes the suspect or suspects, if they are located by law enforcement, may make a statement. A suspect has the right not to incriminate him or herself, therefore the state attorney may never know the suspect or defendant's "side of the story."

III. Effect of Proposed Changes:

The bill amends s. 776.032, F.S., to create a procedure for implementing the justifiable use of force immunity provisions therein.

The procedure set forth in the bill differs from the one settled on by the courts in the absence of legislative provisions on the implementation of the 2005 expansion of the justifiable use of force law in Chapter 776 of the Florida Statutes.[27]

The bill eliminates a defendant's burden of showing by a preponderance of the evidence[28] that he or she is entitled to immunity from arrest, detention, charges being filed against him or her, or prosecution in a situation where the defendant justifiably used or threatened to use force.

Instead, under the bill, once a defendant has made a prima facie[29] claim of self-defense immunity, the burden falls on the party seeking to overcome the claim. The bill diminishes the defendant's standard of proof because a prima facie claim is a lower standard of proof than the current preponderance of the evidence standard.[30]

The bill limits these allocations of the burden and standard of proof to claims of immunity from criminal prosecution. They do not apply to civil cases that may be brought against a defendant.

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[25] For a comprehensive explanation of this process, see Lawson, "A Fresh Cut in an Old Wound – A Critical Analysis of the Trayvon Martin Killing: The Public Outcry, The Prosecutors' Discretion, and the Stand Your Ground Law," 23 U.Fla.J.L.&Pub.Pol'y 271 (2012). The article suggests that beyond the legal issues in any given case, there are other factors that may be taken into account in filing decisions.

[26] "In each judicial circuit a state attorney shall be elected for a term of four years." Article 5, Section 17, Florida Constitution.

[27] See *Bretherick v. State*, 170 So.3d 766 (Fla. 2015); *Dennis v. State*, 51 So.3d 456 (Fla. 2010); *Peterson v. State*, 983 So.2d 27 (Fla. 1st DCA 2008).

[28] "A 'preponderance' of the evidence is defined as 'the greater weight of the evidence,' or evidence that 'more likely than not' tends to prove a certain proposition." *Gross v. Lyons*, 763 So. 2d 276, 280 n.1 (Fla. 2000).

[29] Prima facie evidence is that evidence which is legally sufficient to establish a fact or a case unless disproved. http://www.merriam-webster.com/dictionary/prima%20facie.

[30] See notes 28 and 29.

The bill requires that once the defendant has made a prima facie claim of immunity, the state bears the burden of proving beyond a reasonable doubt, at a pretrial evidentiary hearing, whether the defendant is entitled to a prima facie claim of self-defense immunity.

The bill contains Legislative findings and intent which include the requirement that the new immunity hearing procedures created in the bill "shall apply retroactively to proceedings pending at the time this act becomes law."

Additionally, the bill creates s. 939.061, F.S., which provides that if the court grants the defendant's motion to dismiss claiming immunity from prosecution, the defendant will be reimbursed for costs, fees, and expenses incurred in defending him or herself in the criminal prosecution up to $200,000.

There is no provision for the court to determine the amount of reimbursement, but rather the Justice Administrative Commission must approve and pay the reimbursement based upon valid documentation submitted by the defendant within 60 days of receiving the defendant's request.

The funds to pay the reimbursement claim are required by the bill to come from the operating trust fund of the state attorney who prosecuted the defendant.

The bill directs the Division of Law Revision and Information to replace the phrase "this act" as it appears in the bill with the chapter law number if the bill becomes a law.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Savings Clause

The bill contains Legislative findings and intent which includes the requirement that the new immunity hearing procedures "shall apply retroactively to proceedings pending at the time this act becomes law." Retroactive application is not generally accepted in criminal justice jurisprudence and this provision in the bill may lead to legal challenges.

Article X, Section 9, of the Florida Constitution provides that "[r]epeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed." This constitutional provision operates as a savings clause to preserve laws in effect at the time of a defendant's crime that affect prosecution or punishment. It applies to a substantive change in the law.[31]

Separation of Powers

The bill's provision for reimbursement to the defendant whose case is dismissed based on an immunity claim from the prosecuting state attorney's operating trust fund may be subject to a claim that it violates the separation of powers clause.

This constitutional claim may arise even though the state attorney is not sued individually for reimbursement but because it may be argued that his or her prosecutorial discretion is effected due to the "financial threat" to the operation of the state attorney's office.[32]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Defendants who have their case dismissed will be reimbursed for costs, fees, and expenses and will therefore benefit from the provisions in this bill.

C. Government Sector Impact:

If a defendant's case is dismissed pursuant to the bill, the prosecuting state attorney's office could be required to reimburse the defendant's costs, fees, and expenses incurred

[31] *See, e.g., Smiley v. State*, 966 So.2d 330 (Fla. 2007). The law in effect at the time a defendant commits a crime controls prosecution and punishment of the crime and a substantive change in the criminal law that occurs after the commission of the crime cannot be retroactively applied to that crime to affect prosecution or punishment of that crime. *See e.g., Smiley, supra*, and *Castle v. State*, 305 So.2d 794 (Fla. 4th DCA 1974), *affirmed*, 330 So.2d 10 (Fla. 1976).

[32] "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." FL CONST Art. 2 § 3. See also *Valdes v. State*, 728 So.2d 736 (Fla. 1999): "Article V, section 17, *specifically provides* that state attorneys are the prosecuting officers of all trials in each circuit. This Court has long held that as the prosecuting officer, the state attorney has "complete discretion" in the decision to charge and prosecute, *Cleveland v. State*, 417 So.2d 653, 654 (Fla.1982), and the judiciary cannot interfere with this "discretionary executive function." *State v. Bloom*, 497 So.2d 2, 3 (Fla.1986); and *Office of the State Attorney v. Parrotino*, 628 So.2d 1097 (Fla. 1993): "Article V of the Florida Constitution creates the judicial branch of this state, deliberately separating it from and making it coequal to the other branches of government. Article V also creates the office of State Attorney, implying what is obvious-the State Attorneys are quasi-judicial officers….While the legislature has authority to waive immunity for those organs of government within its purview, the legislature cannot take actions that would undermine the independence of Florida's judicial and quasi-judicial offices. This would violate the doctrine of separation of powers. Art. II, § 3, Fla. Const. For example, subjecting the judiciary and the state's quasi-judicial officers to punitive lawsuits for official actions obviously would fall into the latter category, because it would impinge upon the independence of these offices."

in defending him or herself in the criminal prosecution up to $200,000 from the office's operating trust fund.

VI. Technical Deficiencies:

As a matter of clarification, it is suggested that the language appearing in the Legislative intent/findings – at lines 35-38 – regarding the burdens and standards of proof, and the pretrial evidentiary hearing, could be included in the newly-created subsection (5) of s. 776.032, F.S. The burden falling on the state at a pretrial evidentiary hearing and the standard of proof (beyond a reasonable doubt) are important changes to the current state of the law which will be more readily apparent to practitioners in the new (5).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 776.032 of the Florida Statutes.

This bill creates section 939.061 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.