

1 A bill to be entitled

2 An act relating to the threatened use of force;
3 providing legislative findings and intent; amending s.
4 776.012, F.S.; applying provisions relating to the use
5 of force in defense of persons to the threatened use
6 of force; amending s. 776.013, F.S.; applying
7 presumption relating to the use of deadly force to the
8 threatened use of deadly force in the defense of a
9 residence and similar circumstances; applying
10 provisions relating to such use of force to the
11 threatened use of force; amending s. 776.031, F.S.;
12 applying provisions relating to the use of force in
13 defense of property to the threatened use of force;
14 amending s. 776.032, F.S.; applying immunity
15 provisions that relate to the use of force to the
16 threatened use of force; amending s. 776.041, F.S.;
17 applying provisions relating to the use of force by an
18 aggressor to the threatened use of force; providing
19 exceptions; amending s. 776.051, F.S.; providing that
20 a person is not justified in the threatened use of
21 force to resist an arrest by a law enforcement
22 officer; creating s. 776.09, F.S.; providing that a
23 person is eligible to apply for and receive a
24 certificate of eligibility for expunction,
25 notwithstanding the eligibility requirements, if the
26 charging document in the case is not filed or is

27 dismissed because it is found that the person acted in
 28 lawful self-defense pursuant to the provisions related
 29 to the justifiable use of force in ch. 776, F.S.;
 30 amending s. 943.0585, F.S.; providing that a person is
 31 eligible to apply for and receive a certificate of
 32 eligibility for expunction, notwithstanding the
 33 eligibility requirements, if the charging document in
 34 the case is not filed or is dismissed because it is
 35 found that the person acted in lawful self-defense
 36 pursuant to the provisions related to the justifiable
 37 use of force in ch. 776, F.S.; providing an effective
 38 date.

39
 40 Be It Enacted by the Legislature of the State of Florida:

41
 42 Section 1. (1) The Legislature finds that persons have
 43 been criminally prosecuted and have been sentenced to mandatory
 44 minimum terms of imprisonment pursuant to s. 775.087, Florida
 45 Statutes, for threatening to use force in a manner and under
 46 circumstances that would have been justifiable under chapter
 47 776, Florida Statutes, had force actually been used.

48 (2) The Legislature intends to:

49 (a) Provide criminal and civil immunity to those who
 50 threaten to use force if the threat was made in a manner and
 51 under circumstances that would have been immune under chapter
 52 776, Florida Statutes, had force actually been used.

53 (b) Clarify that those who threaten to use force may claim
 54 self-defense if the threat was made in a manner and under
 55 circumstances that would have been justifiable under chapter
 56 776, Florida Statutes, had force actually been used.

57 (c) Ensure that those who threaten to use force in a
 58 manner and under circumstances that are justifiable under
 59 chapter 776, Florida Statutes, are not sentenced to a mandatory
 60 minimum term of imprisonment pursuant to s. 775.087, Florida
 61 Statutes.

62 (d) Encourage those who have been sentenced to a mandatory
 63 minimum term of imprisonment pursuant to s. 775.087, Florida
 64 Statutes, for threatening to use force in a manner and under
 65 circumstances that are justifiable under chapter 776, Florida
 66 Statutes, to apply for executive clemency.

67 Section 2. Section 776.012, Florida Statutes, is amended
 68 to read:

69 776.012 Use or threatened use of force in defense of
 70 person.—A person is justified in using or threatening to use
 71 force, except deadly force, against another when and to the
 72 extent that the person reasonably believes that such conduct is
 73 necessary to defend himself or herself or another against the
 74 other's imminent use of unlawful force. However, a person is
 75 justified in using or threatening to use ~~the use of~~ deadly force
 76 and does not have a duty to retreat if:

77 (1) He or she reasonably believes that using or
 78 threatening to use such force is necessary to prevent imminent

79 death or great bodily harm to himself or herself or another or
 80 to prevent the imminent commission of a forcible felony; or

81 (2) Under those circumstances permitted pursuant to s.
 82 776.013.

83 Section 3. Subsections (1), (2), and (3) of section
 84 776.013, Florida Statutes, are amended to read:

85 776.013 Home protection; use or threatened use of deadly
 86 force; presumption of fear of death or great bodily harm.—

87 (1) A person is presumed to have held a reasonable fear of
 88 imminent peril of death or great bodily harm to himself or
 89 herself or another when using or threatening to use defensive
 90 force that is intended or likely to cause death or great bodily
 91 harm to another if:

92 (a) The person against whom the defensive force was used
 93 or threatened was in the process of unlawfully and forcefully
 94 entering, or had unlawfully and forcibly entered, a dwelling,
 95 residence, or occupied vehicle, or if that person had removed or
 96 was attempting to remove another against that person's will from
 97 the dwelling, residence, or occupied vehicle; and

98 (b) The person who uses or threatens to use defensive
 99 force knew or had reason to believe that an unlawful and
 100 forcible entry or unlawful and forcible act was occurring or had
 101 occurred.

102 (2) The presumption set forth in subsection (1) does not
 103 apply if:

104 (a) The person against whom the defensive force is used or

105 threatened has the right to be in or is a lawful resident of the
 106 dwelling, residence, or vehicle, such as an owner, lessee, or
 107 titleholder, and there is not an injunction for protection from
 108 domestic violence or a written pretrial supervision order of no
 109 contact against that person; or

110 (b) The person or persons sought to be removed is a child
 111 or grandchild, or is otherwise in the lawful custody or under
 112 the lawful guardianship of, the person against whom the
 113 defensive force is used or threatened; or

114 (c) The person who uses or threatens to use defensive
 115 force is engaged in an unlawful activity or is using the
 116 dwelling, residence, or occupied vehicle to further an unlawful
 117 activity; or

118 (d) The person against whom the defensive force is used or
 119 threatened is a law enforcement officer, as defined in s.
 120 943.10(14), who enters or attempts to enter a dwelling,
 121 residence, or vehicle in the performance of his or her official
 122 duties and the officer identified himself or herself in
 123 accordance with any applicable law or the person using or
 124 threatening to use force knew or reasonably should have known
 125 that the person entering or attempting to enter was a law
 126 enforcement officer.

127 (3) A person who is not engaged in an unlawful activity
 128 and who is attacked in any other place where he or she has a
 129 right to be has no duty to retreat and has the right to stand
 130 his or her ground and use or threaten to use ~~meet force with~~

131 force, including deadly force if he or she reasonably believes
 132 it is necessary to do so to prevent death or great bodily harm
 133 to himself or herself or another or to prevent the commission of
 134 a forcible felony.

135 Section 4. Section 776.031, Florida Statutes, is amended
 136 to read:

137 776.031 Use or threatened use of force in defense of
 138 property ~~others~~.—A person is justified in using or threatening
 139 to use ~~the use of~~ force, except deadly force, against another
 140 when and to the extent that the person reasonably believes that
 141 such conduct is necessary to prevent or terminate the other's
 142 trespass on, or other tortious or criminal interference with,
 143 either real property other than a dwelling or personal property,
 144 lawfully in his or her possession or in the possession of
 145 another who is a member of his or her immediate family or
 146 household or of a person whose property he or she has a legal
 147 duty to protect. However, a ~~the~~ person is justified in using or
 148 threatening to use ~~the use of~~ deadly force only if he or she
 149 reasonably believes that such conduct ~~force~~ is necessary to
 150 prevent the imminent commission of a forcible felony. A person
 151 does not have a duty to retreat if the person is in a place
 152 where he or she has a right to be.

153 Section 5. Subsections (1) and (2) of section 776.032,
 154 Florida Statutes, are amended to read:

155 776.032 Immunity from criminal prosecution and civil
 156 action for justifiable use or threatened use of force.—

157 (1) A person who uses or threatens to use force as
158 permitted in s. 776.012, s. 776.013, or s. 776.031 is justified
159 in ~~using~~ such conduct ~~force~~ and is immune from criminal
160 prosecution and civil action for the use or threatened use of
161 such force, unless the person against whom force was used or
162 threatened is a law enforcement officer, as defined in s.
163 943.10(14), who was acting in the performance of his or her
164 official duties and the officer identified himself or herself in
165 accordance with any applicable law or the person using or
166 threatening to use force knew or reasonably should have known
167 that the person was a law enforcement officer. As used in this
168 subsection, the term "criminal prosecution" includes arresting,
169 detaining in custody, and charging or prosecuting the defendant.

170 (2) A law enforcement agency may use standard procedures
171 for investigating the use or threatened use of force as
172 described in subsection (1), but the agency may not arrest the
173 person for using or threatening to use force unless it
174 determines that there is probable cause that the force that was
175 used or threatened was unlawful.

176 Section 6. Subsection (2) of section 776.041, Florida
177 Statutes, is amended to read:

178 776.041 Use or threatened use of force by aggressor.—The
179 justification described in the preceding sections of this
180 chapter is not available to a person who:

181 (2) Initially provokes the use or threatened use of force
182 against himself or herself, unless:

183 (a) Such force or threat of force is so great that the
 184 person reasonably believes that he or she is in imminent danger
 185 of death or great bodily harm and that he or she has exhausted
 186 every reasonable means to escape such danger other than the use
 187 or threatened use of force which is likely to cause death or
 188 great bodily harm to the assailant; or

189 (b) In good faith, the person withdraws from physical
 190 contact with the assailant and indicates clearly to the
 191 assailant that he or she desires to withdraw and terminate the
 192 use or threatened use of force, but the assailant continues or
 193 resumes the use or threatened use of force.

194 Section 7. Subsection (1) of section 776.051, Florida
 195 Statutes, is amended to read:

196 776.051 Use or threatened use of force in resisting arrest
 197 or making an arrest or in the execution of a legal duty;
 198 prohibition.—

199 (1) A person is not justified in the use or threatened use
 200 of force to resist an arrest by a law enforcement officer, or to
 201 resist a law enforcement officer who is engaged in the execution
 202 of a legal duty, if the law enforcement officer was acting in
 203 good faith and he or she is known, or reasonably appears, to be
 204 a law enforcement officer.

205 Section 8. Section 776.09, Florida Statutes, is created to
 206 read:

207 776.09 Eligibility for expunction of records.—
 208 Notwithstanding the eligibility requirements pursuant to s.

209 943.0585(2), a person who has an information, indictment, or
 210 other charging document either not filed or dismissed by the
 211 state attorney, or dismissed by the court because it was found
 212 that the person acted in lawful self-defense pursuant to the
 213 provisions related to the justifiable use of force in this
 214 chapter, is eligible to apply for and receive a certificate of
 215 eligibility for expunction under s. 943.0585. This section does
 216 not confer any right to the expunction of a criminal history
 217 record, and any request for expunction of a criminal history
 218 record may be denied at the discretion of the court.

219 Section 9. Subsection (5) of section 943.0585, Florida
 220 Statutes, is renumbered as subsection (6), and a new subsection
 221 (5) is added to that section to read:

222 943.0585 Court-ordered expunction of criminal history
 223 records.—The courts of this state have jurisdiction over their
 224 own procedures, including the maintenance, expunction, and
 225 correction of judicial records containing criminal history
 226 information to the extent such procedures are not inconsistent
 227 with the conditions, responsibilities, and duties established by
 228 this section. Any court of competent jurisdiction may order a
 229 criminal justice agency to expunge the criminal history record
 230 of a minor or an adult who complies with the requirements of
 231 this section. The court shall not order a criminal justice
 232 agency to expunge a criminal history record until the person
 233 seeking to expunge a criminal history record has applied for and
 234 received a certificate of eligibility for expunction pursuant to

235 subsection (2). A criminal history record that relates to a
236 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
237 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
238 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
239 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
240 any violation specified as a predicate offense for registration
241 as a sexual predator pursuant to s. 775.21, without regard to
242 whether that offense alone is sufficient to require such
243 registration, or for registration as a sexual offender pursuant
244 to s. 943.0435, may not be expunged, without regard to whether
245 adjudication was withheld, if the defendant was found guilty of
246 or pled guilty or nolo contendere to the offense, or if the
247 defendant, as a minor, was found to have committed, or pled
248 guilty or nolo contendere to committing, the offense as a
249 delinquent act. The court may only order expunction of a
250 criminal history record pertaining to one arrest or one incident
251 of alleged criminal activity, except as provided in this
252 section. The court may, at its sole discretion, order the
253 expunction of a criminal history record pertaining to more than
254 one arrest if the additional arrests directly relate to the
255 original arrest. If the court intends to order the expunction of
256 records pertaining to such additional arrests, such intent must
257 be specified in the order. A criminal justice agency may not
258 expunge any record pertaining to such additional arrests if the
259 order to expunge does not articulate the intention of the court
260 to expunge a record pertaining to more than one arrest. This

261 section does not prevent the court from ordering the expunction
262 of only a portion of a criminal history record pertaining to one
263 arrest or one incident of alleged criminal activity.

264 Notwithstanding any law to the contrary, a criminal justice
265 agency may comply with laws, court orders, and official requests
266 of other jurisdictions relating to expunction, correction, or
267 confidential handling of criminal history records or information
268 derived therefrom. This section does not confer any right to the
269 expunction of any criminal history record, and any request for
270 expunction of a criminal history record may be denied at the
271 sole discretion of the court.

272 (5) LAWFUL SELF-DEFENSE CASES.—Notwithstanding the
273 eligibility requirements pursuant to subsection (2), a person
274 who has an information, indictment, or other charging document
275 either not filed or dismissed by the state attorney, or
276 dismissed by the court because it was found that the person
277 acted in lawful self-defense pursuant to the provisions related
278 to the justifiable use of force in chapter 776, is eligible to
279 apply for and receive a certificate of eligibility for
280 expunction under this section. This subsection does not confer
281 any right to the expunction of a criminal history record, and
282 any request for expunction of a criminal history record may be
283 denied at the discretion of the court.

284 Section 10. This act shall take effect upon becoming a
285 law.