

HB513 INTRODUCED



1 SKS657-1
2 By Representatives Yarbrough, Whorton, Butler, Harrison, Shaw,
3 Rehm, Treadaway, Stringer, Pettus, Robertson
4 RFD: Judiciary
5 First Read: 23-May-23
6 2023 Regular Session



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SYNOPSIS:

Under existing law, a person may use physical force, including deadly physical force, to defend himself, herself, or another person from what he or she reasonably believes to be the use or imminent use of unlawful physical force, with exception.

This bill would provide a presumption of reasonableness in regard to an individual's use of physical force to defend himself, herself, or another person.

Under existing law, an individual who uses force that is justified is immune from criminal prosecution and civil action for the use of such force unless the force was determined unlawful.

This bill would provide that a person is immune from criminal prosecution or civil action for the use of justified physical force for self-defense unless the individual against whom force was used was a law enforcement carrying out an official duty or the individual knew or should have known the individual against whom force was used was a law enforcement officer.

Under existing law, a defendant claiming self-defense has the burden of proving, by a preponderance of the evidence, that his or her use of



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29 force was reasonable.

30 This bill would shift the burden of proof to the
31 state by requiring a showing by clear and convincing
32 evidence that the defendant's use of force was
33 unreasonable.

34 This bill would also make nonsubstantive,
35 technical revisions to update the existing code
36 language to current style.

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A BILL

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TO BE ENTITLED

41

AN ACT

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43 Relating to self-defense, to amend Section 13A-3-23,
44 Code of Alabama 1975, to provide a person's use of physical
45 force in defending himself, herself, or another person is
46 presumed reasonable; to further provide for the immunity
47 received by a person whose use of physical force on another
48 person is justified self-defense; to shift the burden of
49 proving a person's use of physical force is not justified to
50 the state; and to make nonsubstantive, technical revisions to
51 update the existing code language to current style.

52 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

53 Section 1. Section 13A-3-23, Code of Alabama 1975, is
54 amended to read as follows:

55 "§13A-3-23

56 (a) A person is justified in using physical force upon



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57 another person in order to defend himself, ~~or~~ herself, ~~or a~~
58 ~~third~~ another person from what he or she reasonably believes
59 to be the use or imminent use of unlawful physical force by
60 that other person, and he or she may use a degree of force
61 which he or she reasonably believes to be necessary for the
62 purpose. A person may use deadly physical force, and is
63 legally presumed to be justified in using deadly physical
64 force in self-defense or the defense of another person
65 pursuant to subdivision (5), if the person reasonably believes
66 that another person is:

67 (1) Using or about to use unlawful deadly physical
68 force.

69 (2) Using or about to use physical force against an
70 occupant of a dwelling while committing or attempting to
71 commit a burglary of such dwelling.

72 (3) Committing or about to commit a kidnapping in any
73 degree, assault in the first or second degree, burglary in any
74 degree, robbery in any degree, forcible rape, or forcible
75 sodomy.

76 (4) Using or about to use physical force against an
77 owner, employee, or other person authorized to be on business
78 property when the business is closed to the public while
79 committing or attempting to commit a crime involving death,
80 serious physical injury, robbery, kidnapping, rape, sodomy, or
81 a crime of a sexual nature involving a child under the age of
82 12.

83 (5) In the process of unlawfully and forcefully
84 entering, or has unlawfully and forcefully entered, a



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85 dwelling, residence, business property, or occupied vehicle,
86 or federally licensed nuclear power facility~~;~~~~;~~ is in the
87 process of sabotaging or attempting to sabotage a federally
88 licensed nuclear power facility~~;~~~~;~~ is attempting to remove,
89 or has forcefully removed, a person against his or her will
90 from any dwelling, residence, business property, or occupied
91 vehicle when the person has a legal right to be there, and
92 provided that the person using the deadly physical force knows
93 or has reason to believe that an unlawful and forcible entry
94 or unlawful and forcible act is occurring. The legal
95 presumption that a person using deadly physical force is
96 justified to do so pursuant to this subdivision does not apply
97 if in any of the following circumstances:

98 a. The person against whom the defensive force is used
99 has the right to be in or is a lawful resident of the
100 dwelling, residence, or vehicle, such as an owner or lessee,
101 and there is not an injunction for protection from domestic
102 violence or a written pretrial supervision order of no contact
103 against that person~~;~~~~;~~.

104 b. The person sought to be removed is a child or
105 grandchild, or is otherwise in the lawful custody or under the
106 lawful guardianship of, the person against whom the defensive
107 force is used~~;~~~~;~~.

108 c. The person who uses defensive force is engaged in an
109 unlawful activity or is using the dwelling, residence, or
110 occupied vehicle to further an unlawful activity~~;~~~~;~~.

111 d. The person against whom the defensive force is used
112 is a law enforcement officer acting in the performance of his



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113 or her official duties.

114 (b) A person who is justified under subsection (a) in
115 using physical force, including deadly physical force, ~~and~~ who
116 is not engaged in an unlawful activity, and is in any place
117 where he or she has the right to be has no duty to retreat and
118 has the right to stand his or her ground.

119 (c) Notwithstanding the provisions of subsection (a), a
120 person is not justified in using physical force if:

121 (1) With intent to cause physical injury or death to
122 another person, he or she provoked the use of unlawful
123 physical force by ~~such~~ the other person.

124 (2) He or she was the initial aggressor, except that
125 his or her use of physical force upon another person under the
126 circumstances is justifiable if he or she withdraws from the
127 encounter and effectively communicates to the other person his
128 or her intent to do so, but the latter person ~~nevertheless~~
129 continues or threatens the use of unlawful physical force.

130 (3) The physical force involved was the product of a
131 combat by agreement not specifically authorized by law.

132 (d) ~~(1)~~ A person who uses physical force, including
133 deadly physical force, as justified and permitted in this
134 section is immune from criminal prosecution and civil action
135 for the use of such force except in any of the following
136 circumstances: ~~, unless the force was determined to be~~
137 ~~unlawful.~~

138 (1) The person against whom force was used was a law
139 enforcement officer carrying out his or her official duties
140 and the officer identified himself or herself in accordance



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141 with applicable laws.

142 (2) The person knew or reasonably should have known the
143 individual against whom force was used or threatened was a law
144 enforcement officer carrying out his or her official duties.

145 (e) There shall be a presumption of reasonableness
146 under this section that the defendant believed the use of
147 force was necessary to defend himself, herself, or another
148 person from what he or she believed to be the use or imminent
149 use of unlawful force by another person.

150 ~~(2)~~ (f) (1) Prior to the commencement of a trial in a
151 case in which a defense is claimed under this section, the
152 court having jurisdiction over the case, upon motion of the
153 defendant, shall conduct a pretrial hearing to determine
154 whether force, including deadly force, used by the defendant
155 was justified or whether it was unlawful under this section.
156 During any pretrial hearing to determine immunity, the
157 ~~defendant state~~ must show by ~~a preponderance of the~~ clear and
158 convincing evidence that ~~he or she~~ the defendant is not immune
159 from criminal prosecution.

160 ~~(3)~~ (2) If, after a pretrial hearing under ~~subdivision~~
161 ~~(2)~~ this subsection, the court concludes that the ~~defendant~~
162 state has ~~proven~~ failed to prove by ~~a preponderance of the~~
163 clear and convincing evidence that the use of force, including
164 deadly force, was not justified, the court shall enter an
165 order finding the defendant immune from criminal prosecution
166 and ~~dismissing~~ shall dismiss the criminal charges.

167 ~~(4)~~ (3) If the ~~defendant state~~ does ~~not~~ meet ~~his or her~~
168 its burden of proving ~~immunity~~ by clear and convincing



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169 evidence that the use of force, including deadly force, was
170 not justified at the pre-trial hearing, ~~he or she~~ the state
171 may continue to pursue ~~the defense of self-defense or defense~~
172 ~~of another person~~ the claim at trial.

173 (4) Once the issue of self-defense or defense of
174 another person has been raised by the defendant, the state
175 continues to bear the burden of proving beyond a reasonable
176 doubt all of the elements of the charged conduct.

177 ~~(e)~~ (g) A law enforcement agency may use standard
178 procedures for investigating the use of force described in
179 subsection (a), but the agency may not arrest the person for
180 using force unless it determines that there is probable cause
181 that the force used was unlawful."

182 Section 2. This act shall become effective on the first
183 day of the third month following its passage and approval by
184 the Governor, or its otherwise becoming law.