

House Bill 505

By: Representatives Nguyen of the 89th, Beverly of the 143rd, Gilliard of the 162nd, Boddie of the 62nd, Jackson of the 64th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 3 of Title 16 of the Official Code of Georgia Annotated,
2 relating to justification and excuse, so as to comprehensively revise the law regarding
3 justification and the use of force; to provide for certain investigations and reports in certain
4 circumstances; to repeal certain Code sections; to provide for related matters; to amend
5 Titles 15, 16, 17, 20, and 51 of the Official Code of Georgia Annotated, relating to courts,
6 crimes and offenses, criminal procedure, education, and torts, respectively, to make
7 conforming changes; to provide for an effective date and applicability; to repeal conflicting
8 laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **PART ONE**
11 **SECTION 1-1.**

12 Article 2 of Chapter 3 of Title 16 of the Official Code of Georgia Annotated, relating to
13 justification and excuse, is amended by revising paragraph (1) of Code Section 16-3-20,
14 relating to justification, as follows:

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38 (2) That force is used against another person who is not a member of the family or
39 household and who unlawfully and forcibly enters or has unlawfully and forcibly entered
40 the residence and the person using such force knew or had reason to believe that an
41 unlawful and forcible entry occurred; or

42 (3) The person using such force reasonably believes that the entry is made or attempted
43 for the purpose of committing a felony therein and that such force is necessary to prevent
44 the commission of the felony.

45 (b) If a death does result from the use of force and a claim of lawful use of force pursuant
46 to this Code section or Code Section 16-3-24 is raised formally or informally, the following
47 actions shall be taken:

48 (1) The local law enforcement agency and the coroner shall conduct an immediate and
49 full investigation into the death, and all evidence shall be preserved;

50 (2) If probable cause exists to effect an arrest of the person claiming self-defense, the law
51 enforcement agency shall effect the arrest without delay;

52 (3) If the local law enforcement agency declines to effect an arrest, or if the office of the
53 district attorney declines to file charges, the local law enforcement agency or agencies
54 shall submit a report which documents all investigative efforts to the Georgia Bureau of
55 Investigation, which shall, in consultation with the office of the Attorney General,
56 determine whether to conduct a further investigation; and

57 (4) In any case in which the Georgia Bureau of Investigation determines that further
58 investigation is warranted, the Attorney General shall assign a prosecuting attorney
59 pursuant to Code Section 15-18-5 to investigate and handle such case.

60 (c) Annually, the Georgia Bureau of Investigation shall publish on its publicly accessible
61 website a report detailing the following:

62 (1) The number of cases involving all use of force claims where a local law enforcement
63 agency or district attorney declined to file charges or effect an arrest;

64 (2) The number of cases where the Georgia Bureau of Investigation conducted a further
65 investigation; and

66 (3) The number of cases which were referred to the office of the Attorney General for
67 prosecution.

68 (d) If an arrest results in a prosecution for murder or manslaughter, a defendant may not
69 raise a justification defense during a pretrial hearing for the purposes of exoneration. The
70 defendant may only raise a justification defense during a jury trial for the purposes of
71 exoneration.

72 (e) Nothing in this Code section shall preclude a person from bringing or from being held
73 liable in a civil action."

74 **SECTION 1-5.**

75 Said article is further amended by repealing and reserving Code Section 16-3-23.1, relating
76 to no duty to retreat prior to use of force in self-defense, in its entirety.

77 **SECTION 1-6.**

78 Said article is further amended by revising Code Section 16-3-24, relating to use of force in
79 defense of property other than a habitation, by repealing the Code section in its entirety and
80 substituting in lieu thereof the following:

81 "16-3-24.

82 (a) A person may threaten or use nondeadly physical force against another when and to the
83 extent that he or she reasonably believes that such threat or force is necessary to prevent
84 or terminate physical force from another person.

85 (b) A person may threaten or use deadly physical force against another if he or she
86 reasonably believes such threat or force is necessary to terminate or prevent imminent
87 danger of death or serious bodily injury against himself or herself or a third person or to
88 prevent or terminate a forcible felony, as defined in paragraph (6) of Code Section 16-1-3.

- 89 (c) A person shall not threaten or use deadly physical force against another if he or she:
 90 (1) Initially provokes the use of force against himself or herself with the intent to use
 91 such force as an excuse to inflict bodily harm upon the assailant;
 92 (2) Is fleeing after the commission or the attempted commission of a felony;
 93 (3) Was the aggressor or was engaged in a combat by agreement unless he or she
 94 withdraws from the encounter and effectively communicates to such other person his or
 95 her intent to do so and the other, notwithstanding, continues or threatens to continue the
 96 use of unlawful force; or
 97 (4) Can safely remove himself or herself from the situation without using deadly physical
 98 force.
- 99 (d) If a death does result from the use of force and a claim of lawful use of force is raised,
 100 the procedures as defined in subsection (b) of Code Section 16-3-23 shall apply.
- 101 (e) Nothing in this Code section shall preclude a person from bringing or from being held
 102 liable in a civil action."

103 **SECTION 1-7.**

104 Said article is further amended by revising Code Section Code Section 16-3-24.1, relating
 105 to habitation and personal property defined, as follows:

106 "16-3-24.1.

107 As used in Code Sections 16-3-23 and 16-3-24, the term 'habitation' means any dwelling;
 108 ~~or motor vehicle, or place of business, and 'personal property' means personal property~~
 109 ~~other than a motor vehicle."~~

110 **SECTION 1-8.**

111 Said article is further amended by repealing Code Section 16-3-24.2, relating to immunity
 112 from prosecution and exception, in its entirety.

113 **SECTION 1-9.**

114 Article 1 of Chapter 11 of Title 51 of the Official Code of Georgia Annotated, relating to
115 general provisions regarding defenses to tort actions, is amended by repealing and reserving
116 Code Section 51-11-9, relating to immunity from civil liability for threat or use of force in
117 defense of habitation, in its entirety.

118 **PART TWO**

119 **SECTION 2-1.**

120 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising
121 subparagraph (b)(5)(E) of Code Section 15-12-71, relating to duties of grand jury, as follows:

122 "(E) Prior to the introduction of any evidence or the first witness being sworn, the
123 district attorney shall advise the grand jury of the laws applicable to the conduct of such
124 review. In particular, the grand jury shall be advised of Code Sections 16-3-20;
125 ~~16-3-21, 16-3-23.1,~~ and 17-4-20."

126 **SECTION 2-2.**

127 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
128 amended by revising paragraph (3) of subsection (c) of Code Section 16-11-132, relating to
129 possession of handgun by person under the age of 18 years, as follows:

130 "(3) Any person under the age of 18 years who is at such person's residence and who,
131 with the permission of such person's parent or legal guardian, possesses a handgun for the
132 purpose of exercising the rights authorized in Code Section ~~16-3-21~~ or 16-3-23 or
133 16-3-24."

134 **SECTION 2-3.**

135 Said title is further amended by revising Code Section 16-11-162, relating to exemption for
136 use of force in defense of others, as follows:

137 "16-11-162.

138 This part shall not apply to persons who use force in defense of others as provided by Code
139 Section ~~16-3-21~~ 16-3-24. This part is intended to supplement not to supplant Code
140 Section 16-11-106."

141 **SECTION 2-4.**

142 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
143 amended by revising paragraph (1) of subsection (f) of Code Section 17-4-20, relating to
144 authorization of arrests with and without warrants generally, use of deadly force, adoption
145 or promulgation of conflicting regulations, policies, ordinances, and resolutions, and
146 authority of nuclear power facility security officer, as follows:

147 "(1) Threaten or use force against another in defense of a federally licensed nuclear
148 power facility and the persons therein as provided for under Code Sections ~~16-3-21~~ and
149 16-3-23 and 16-3-24;"

150 **SECTION 2-5.**

151 Said title is further amended by revising subsection (c) of Code Section 17-7-52, relating to
152 procedure for indictment or special presentment of peace officer for crime in performance
153 of duties, notification, and rights of officer, as follows:

154 "(c) Prior to the introduction of any evidence or the first witness being sworn, the
155 prosecuting attorney shall advise the grand jury of the laws applicable to the conduct of
156 such proceedings, all relevant sections of the Code relating to the crime or crimes alleged
157 in the bill of indictment, and any Code section that excuses or justifies such conduct. In

158 particular, the grand jury shall be advised of Code Sections 16-3-20, ~~16-3-21, 16-3-23.1,~~
 159 16-3-23, 16-3-24, and 17-4-20."

160 **SECTION 2-6.**

161 Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by
 162 revising paragraph (2) of subsection (a) of Code Section 20-2-751.6, relating to disciplinary
 163 policy for students committing acts of physical violence against teacher, school bus driver,
 164 or other school official or employee, as follows:

165 "(2) Intentionally making physical contact which causes physical harm to another unless
 166 such physical contacts or physical harms were in defense of himself or herself, as
 167 provided in Code Section ~~16-3-21~~ 16-3-24."

168 **SECTION 2-7.**

169 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by revising
 170 Code Section 51-1-30.4, relating to immunity from liability for officers providing security
 171 at nuclear facilities, as follows:

172 "51-1-30.4.

173 Notwithstanding any other provision of law, an authorized security officer as provided for
 174 in Code Section 16-11-124 acting within the scope of his or her official duties on the
 175 premises of a federally licensed nuclear power facility or the properties adjacent to the
 176 facility pursuant to a written agreement entered into with the local law enforcement agency
 177 having jurisdiction over the facility ~~shall be entitled to immunity as provided in Code~~
 178 ~~Section 51-11-9. Such officer~~ and the officer's employer or the owner, operator, or licensee
 179 of the facility where the officer is providing security services shall also be immune from
 180 liability for the officer's good faith performance of his or her duties at such facility in
 181 accordance with a nuclear security plan approved by the United States Nuclear Regulatory
 182 Commission or other authorized federal agency."

183 **PART THREE**
184 **SECTION 3-1.**

185 This Act shall become effective upon its approval by the Governor or upon its becoming law
186 without such approval. This Act shall not affect rights and duties that matured, penalties that
187 were incurred, and proceedings that were begun before the effective date of this Act.

188 **SECTION 3-2.**

189 All laws and parts of laws in conflict with this Act are repealed.