

Senate Bill 254

By: Senators Anderson of the 43rd, Jones II of the 22nd, Jackson of the 41st, Orrock of the 36th, Lucas of the 26th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and
2 offenses, so as to provide for comprehensive revisions regarding justification and the use of
3 force; to provide for certain investigations and reports in certain circumstances; to repeal
4 certain Code sections; to provide for conforming changes; to amend Titles 15, 17, and 20 of
5 the Official Code of Georgia Annotated, relating to courts, criminal procedure, and
6 education, respectively, so as to provide for conforming changes; to amend Title 51 of the
7 Official Code of Georgia Annotated, relating to torts, so as to repeal a Code section; to
8 provide for a conforming change; to provide for related matters; to provide for an effective
9 date and construction of act; to repeal conflicting laws; and for other purposes.

10

PART I

11

SECTION 1-1.

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

15 "The fact that a person's conduct is justified is a defense to prosecution for any crime based
16 on that conduct. The defense of justification can be claimed:

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17 (1) When the person's conduct is justified under Code Section ~~16-3-21~~, 16-3-23, 16-3-24,
18 16-3-25, or 16-3-26;"

19 **SECTION 1-2.**

20 Said title is further amended by repealing and reserving Code Section 16-3-21, relating to use
21 of force in defense of self or others and evidence of belief that force was necessary in murder
22 or manslaughter prosecution; Code Section 16-3-22, relating to immunity from criminal
23 liability of persons rendering assistance to law enforcement officers; Code Section 16-3-23.1,
24 relating to no duty to retreat prior to use of force in self-defense; and Code Section 16-3-24.2,
25 relating to immunity from prosecution and exception, in their entireties.

26 **SECTION 1-3.**

27 Said title is further amended by revising Code Section 16-3-23, relating to use of force in
28 defense of habitation, as follows:

29 "(a) A person is justified in threatening or using force against another, and has no duty to
30 retreat, when and to the extent that he or she reasonably believes that such threat or force
31 is necessary to prevent or terminate such other's unlawful entry into or attack upon a
32 habitation as defined in Code section 16-3-24.1; however, such person is justified in the use
33 of force which is intended or likely to cause death or great bodily harm only if:

34 (1) The entry is made or attempted in a violent and tumultuous manner and he or she
35 reasonably believes that the entry is attempted or made for the purpose of assaulting or
36 offering personal violence to any person dwelling or being therein and that such force is
37 necessary to prevent the assault or offer of personal violence;

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) When the use of force results in death and a claim of lawful use of force pursuant to
46 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 such arrest without delay;

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

57 (4) In any case when the Georgia Bureau of Investigation determines that further
58 investigation is warranted, the Attorney General shall assign a solicitor-general pro
59 tempore pursuant to Code Section 15-18-65 to investigate and handle such case.

60 (c) The Georgia Bureau of Investigation shall annually publish on its publicly accessible
61 website a report detailing the number of cases:

62 (1) Involving all use of force claims when the local law enforcement agency or district
63 attorney declined to file charges or effect an arrest;

64 (2) When the Georgia Bureau of Investigation conducted a further investigation; and

65 (3) Referred to the Attorney General for prosecution.

66 (d) When an arrest results in a prosecution for murder or manslaughter, a defendant may
67 not raise a justification defense during pretrial hearing for the purposes of exoneration. The

68 defendant may only raise a justification defense during a jury trial for the purposes of
69 exoneration.
70 (e) Nothing in this Code section shall preclude a person from bringing or from being held
71 liable in a civil action."

72 **SECTION 1-4.**

73 Said title is further amended by repealing Code Section 16-3-24 in its entirety and reenacting
74 a new Code Section 16-3-24 to read as follows:

75 "16-3-24.

76 (a) A person may threaten or use nondeadly physical force against another when and to the
77 extent that he or she reasonably believes that such threat or use of nondeadly physical force
78 is necessary to prevent or terminate physical force by another person.

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

83 (c) A person shall not threaten or use deadly physical force against another if he or she:

84 (1) Initially provokes the use of force against himself or herself with the intent to use
85 such force as an excuse to inflict bodily harm upon the assailant;

86 (2) Is fleeing after the commission or the attempted commission of a felony;

87 (3) Was the aggressor or was engaged in a combat by agreement unless he or she
88 withdraws from the encounter and effectively communicates to such other person his or
89 her intent to do so and the other, notwithstanding, continues or threatens to continue the
90 use of unlawful force; or

91 (4) Can safely remove himself or herself from the situation without using deadly physical
92 force.

93 (d) When the use of force results in death and a claim of lawful use of force is raised, the
94 procedures as provided for in subsection (b) of Code Section 16-3-23 shall apply.
95 (e) Nothing in this Code section shall preclude a person from bringing or from being held
96 liable in a civil action."

97 **SECTION 1-5.**

98 Said title is further amended in Code Section 16-3-24.1, relating to habitation and personal
99 property defined as follows:

100 "~~As used in Code Sections 16-3-23 and 16-3-24~~ Section 16-3-23, the term 'habitation'

101 means any dwelling, motor vehicle, or place of business, and 'personal property' means

102 personal property other than a motor vehicle."

103 **SECTION 1-6.**

104 Said title is further amended by revising paragraph (3) of subsection (c) of Code Section
105 16-11-132, relating to possession of handgun by person under the age of 18 years, as follows:

106 "(3) Any person under the age of 18 years who is at such person's residence and who,

107 with the permission of such person's parent or legal guardian, possesses a handgun for the

108 purpose of exercising the rights authorized in Code Section ~~16-3-21~~, 16-3-23; or

109 16-3-24."

110 **SECTION 1.7.**

111 Said title is further amended by revising Code Section 16-11-162, relating to the use of force
112 in defense of others, as follows:

113 "This part shall not apply to persons who use force in defense of others as provided by

114 Code Section ~~16-3-21~~ 16-3-24. This part is intended to supplement not to supplant Code

115 Section 16-11-106."

116

PART II

117

SECTION 2-1.

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

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

125

SECTION 2-2.

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

131 "(1) Threaten or use force against another in defense of a federally licensed nuclear
132 power facility and the persons therein as provided for under Code Sections ~~16-3-21~~ and
133 16-3-23 and 16-3-24."

134

SECTION 2-3.

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

138 "(c) Prior to the introduction of any evidence or the first witness being sworn, the
139 prosecuting attorney shall advise the grand jury of the laws applicable to the conduct of

140 such proceedings, all relevant sections of the Code relating to the crime or crimes alleged
141 in the bill of indictment, and any Code section that excuses or justifies such conduct. In
142 particular, the grand jury shall be advised of Code Sections 16-3-20, ~~16-3-21~~, ~~16-3-23.1~~,
143 16-3-23, 16-3-24, and 17-4-20."

144 **SECTION 2-4.**

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

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

152 **SECTION 2-5.**

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

156 "51-1-30.4.

157 Notwithstanding any other provision of law, an authorized security officer ~~as provided for~~
158 ~~in Code Section 16-11-124~~ acting within the scope of his or her official duties on the
159 premises of a federally licensed nuclear power facility or the properties adjacent to the
160 facility pursuant to a written agreement entered into with the local law enforcement agency
161 having jurisdiction over the facility ~~shall be entitled to immunity as provided in Code~~
162 ~~Section 51-11-9. Such officer~~ and the officer's employer or the owner, operator, or licensee
163 of the facility where the officer is providing security services shall ~~also~~ be immune from
164 liability for the officer's good faith performance of his or her duties at such facility in

165 accordance with a nuclear security plan approved by the United States Nuclear Regulatory
166 Commission or other authorized federal agency."

167 **SECTION 2-6.**

168 Said title is further amended by repealing and reserving Code Section 51-11-9, relating to
169 immunity to civil liability for threat or use of force in defense of habitation, in its entirety.

170 **PART III**

171 **SECTION 3-1.**

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

175 **SECTION 3-2.**

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