

House Bill 194

By: Representatives Byrd of the 20th, Kahaian of the 81st, Ridley of the 22nd, and Horner of the 3rd

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 in defenses to criminal prosecutions, so as to revise
3 standards of justification for use of force in defense of self or others; to provide for a
4 rebuttable presumption; to provide for timing for claims of immunity from prosecution based
5 upon justification; to provide for standards of proof; to amend Code Section 51-11-9 of the
6 Official Code of Georgia Annotated, relating to no duty to retreat and immunity in certain
7 instances of threat or use of force, so as to extend immunity from civil liability in justified
8 use of force cases to legal representatives and heirs of the person against whom force was
9 used; to provide for related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 2 of Chapter 3 of Title 16 of the Official Code of Georgia Annotated, relating to
13 justification and excuse in defenses to criminal prosecutions, is amended by revising Code
14 Section 16-3-21, relating to use of force in defense of self or others and evidence of belief
15 that force was necessary in murder or manslaughter prosecution, as follows:

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16 "16-3-21.

17 (a) A person is justified in threatening or using force against another when and to the
18 extent that he or she reasonably believes that such threat or force is necessary to defend
19 himself or herself or a third person against such other's imminent use of unlawful force;
20 however, except as provided in Code Section 16-3-23, a person is justified in using force
21 which is intended or likely to cause death or great bodily harm only if he or she reasonably
22 believes that such force is necessary to prevent death or great bodily injury to himself or
23 herself or a third person or to prevent the commission of a forcible felony. Any such use
24 of force is presumed to be reasonable and necessary for defense and justified pursuant to
25 this Code section, but such presumption may be rebutted.

26 (b) A person is not justified in using force under the circumstances specified in
27 subsection (a) of this Code section if ~~he~~:

28 (1) He or she used or threatened force against a law enforcement officer acting in the
29 performance of his or her official duties and such officer properly identified himself or
30 herself in accordance with law or the person who used or threatened force knew or
31 reasonably should have known that the person was a law enforcement officer ~~Initially~~
32 ~~provokes the use of force against himself with the intent to use such force as an excuse~~
33 ~~to inflict bodily harm upon the assailant; and~~

34 (2) The force used or threatened occurred in a location readily accessible to the public
35 or a place of public accommodation. ~~Is attempting to commit, committing, or fleeing~~
36 ~~after the commission or attempted commission of a felony; or~~

37 (3) ~~Was the aggressor or was engaged in a combat by agreement unless he withdraws~~
38 ~~from the encounter and effectively communicates to such other person his intent to do so~~
39 ~~and the other, notwithstanding, continues or threatens to continue the use of unlawful~~
40 ~~force.~~

41 (c) Any rule, regulation, or policy of any agency of the state or any ordinance, resolution,
42 rule, regulation, or policy of any county, municipality, or other political subdivision of the

43 state which is in conflict with this Code section shall be null, void, and of no force and
44 effect.

45 (d) In a prosecution for murder or manslaughter, if a defendant raises as a defense a
46 justification provided by subsection (a) of this Code section, the defendant, in order to
47 establish the defendant's reasonable belief that the use of force or deadly force was
48 immediately necessary, may be permitted to offer:

49 (1) Relevant evidence that the defendant had been the victim of acts of family violence
50 or child abuse committed by the deceased, as such acts are described in Code
51 Sections 19-13-1 and 19-15-1, respectively; and

52 (2) Relevant expert testimony regarding the condition of the mind of the defendant at the
53 time of the offense, including those relevant facts and circumstances relating to the family
54 violence or child abuse that are the bases of the expert's opinion."

55 **SECTION 2.**

56 Said article is further amended by revising Code Section 16-3-24.2, relating to immunity
57 from prosecution and exception, as follows:

58 "16-3-24.2.

59 (a) A person who uses threats or force in accordance with Code Section 16-3-20, 16-3-21,
60 16-3-23, 16-3-23.1, 16-3-24, or 17-4-20 shall be immune from criminal prosecution
61 therefor unless in the use of deadly force, such person utilizes a weapon the carrying or
62 possession of which is unlawful by such person under Part 2 of Article 4 of Chapter 11 of
63 this title.

64 (b) A law enforcement agency may use standard procedures to investigate the use of
65 threats or force in instances set forth in subsection (a) of this Code section; provided,
66 however, that such agency shall not arrest a person for using or threatening to use force
67 unless a probable cause determination has been made that such force used or threatened
68 was unlawful.

69 (c) A claim of immunity pursuant to this Code section may be made during arraignment
70 or as a pretrial motion. When a prima-facie claim of immunity has been raised, such claim
71 shall only be overcome by clear and convincing evidence."

72

SECTION 3.

73 Code Section 51-11-9 of the Official Code of Georgia Annotated, relating to no duty to
74 retreat and immunity in certain instances of threat or use of force, is amended as follows:

75 "51-11-9.

76 A person who is justified in threatening or using force against another under the provisions
77 of Code Section 16-3-20, relating to justification as a defense, Code Section 16-3-21,
78 relating to the use of force in defense of self or others, Code Section 16-3-23, relating to
79 the use of force in defense of a habitation, Code Section 16-3-24, relating to the use of
80 force in defense of property other than a habitation, or Code Section 17-4-20, relating to
81 arrests and use of force by law enforcement officers, has no duty to retreat from the use of
82 such force and shall not be held liable to the person against whom the use of force was
83 justified, to any personal representative or heir of such person, or to any person acting as
84 an accomplice or assistant to such person in any civil action brought as a result of the threat
85 or use of such force."

86

SECTION 4.

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