

House Bill 1190

By: Representatives Nguyen of the 89th, Shannon of the 84th, Boddie of the 62nd, Holly of the 111th, Hugley of the 136th, 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 amend Titles 15, 16, 17, 20, and 51 of the Official Code of Georgia
5 Annotated, relating to courts, crimes and offense, criminal procedure, education, and torts,
6 respectively, so as to make conforming changes; to provide for related matters; to provide
7 an effective date and applicability; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **PART I.**
10 **SECTION 1-1.**

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

14 "(1) When the person's conduct is justified under Code Section ~~16-3-21~~, 16-3-23,
15 16-3-24, 16-3-25, or 16-3-26;"

16 **SECTION 1-2.**

17 Said article is further amended by repealing and reserving Code Section 16-3-21, relating to
18 use of force in defense of self or others and evidence of belief that force was necessary in
19 murder or manslaughter prosecution; Code Section 16-3-22, relating to immunity from
20 criminal liability of persons rendering assistance to law enforcement officers; Code
21 Section 16-3-22.1, relating to persons who provide assistance to law enforcement officers or
22 the Division of Family and Children Services when the health and safety of children are
23 adversely affected and threatened; Code Section 16-3-23.1, relating to no duty to retreat prior

24 to use of force in self-defense; and Code Section 16-3-24.2, relating to immunity from
 25 prosecution and exception, in their entirety.

26 **SECTION 1-3.**

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

29 "16-3-23.

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

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

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

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

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

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

51 (2) If probable cause exists to effect an arrest of the person claiming justification, a law
 52 enforcement agency shall effect the arrest without delay;

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

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

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

63 (1) The number of cases involving a claim of a lawful use of force in which a local law
 64 enforcement agency or district attorney declined to file charges or effect an arrest;

65 (2) The number of such cases in which the Georgia Bureau of Investigation conducted
 66 a further investigation; and

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

68 (d) Nothing in this Code section shall preclude a person from bringing or from being held
 69 liable in a civil action."

70 **SECTION 1-4.**

71 Said article is further amended by revising Code Section 16-3-24, relating to use of force in
 72 defense of property other than a habitation, as follows:

73 "16-3-24.

74 ~~(a) A person is justified in threatening or using force against another when and to the~~
 75 ~~extent that he reasonably believes that such threat or force is necessary to prevent or~~
 76 ~~terminate such other's trespass on or other tortious or criminal interference with real~~
 77 ~~property other than a habitation or personal property:~~

78 ~~(1) Lawfully in his possession;~~

79 ~~(2) Lawfully in the possession of a member of his immediate family; or~~

80 ~~(3) Belonging to a person whose property he has a legal duty to protect.~~

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

84 ~~(b) The use of force which is intended or likely to cause death or great bodily harm to~~
 85 ~~prevent trespass on or other tortious or criminal interference with real property other than~~
 86 ~~a habitation or personal property is not justified unless the person using such force~~
 87 ~~reasonably believes that it is necessary to prevent the commission of a forcible felony A~~
 88 person may threaten or use deadly physical force against another if he or she reasonably
 89 believes that such threat or force is necessary to terminate or prevent imminent danger of
 90 death or serious bodily injury against himself or a third person or to prevent or terminate
 91 a forcible felony, as defined in Code Section 16-1-3.

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

- 93 (1) Initially provokes the use of force against himself with the intent to use such force
 94 as an excuse to inflict bodily harm upon the assailant;
 95 (2) Is fleeing after the commission or the attempted commission of a felony;
 96 (3) Was the aggressor or was engaged in a combat by agreement unless he or she
 97 withdraws from the encounter and effectively communicates to such other person his or
 98 her intent to do so and the other, notwithstanding, continues or threatens to continue the
 99 use of unlawful force; or
 100 (4) Can safely remove himself or herself from the situation without using deadly physical
 101 force.
 102 (d) If a death does result from the use of force and a claim of lawful use of force is raised,
 103 the procedures defined in subsection (b) of Code Section 16-3-23 shall apply.
 104 (e) Nothing in this Code section shall preclude a person from bringing or from being held
 105 liable in a civil action."

106 **SECTION 1-5.**

107 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by repealing
 108 and reserving Code Section 51-11-9, relating to immunity from civil liability for threat or
 109 use of force in defense of habitation, in its entirety.

110 **PART II.**

111 **SECTION 2-1.**

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

115 "(E) Prior to the introduction of any evidence or the first witness being sworn, the
 116 district attorney shall advise the grand jury of the laws applicable to the conduct of such
 117 review. In particular, the grand jury shall be advised of Code Sections 16-3-20;
 118 ~~16-3-21, 16-3-23.1,~~ and 17-4-20."

119 **SECTION 2-2.**

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

123 "(3) Any person under the age of 18 years who is at such person's residence and who,
 124 with the permission of such person's parent or legal guardian, possesses a handgun for the

125 purpose of exercising the rights authorized in Code Section ~~16-3-21~~ or 16-3-23 or
 126 16-3-24."

127 **SECTION 2-3.**

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

130 "16-11-162.

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

134 **SECTION 2-4.**

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

140 "(1) Threaten or use force against another in defense of a federally licensed nuclear
 141 power facility and the persons therein as provided for under Code Sections ~~16-3-21~~ and
 142 16-3-23 and 16-3-24;"

143 **SECTION 2-5.**

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

147 "(c) Prior to the introduction of any evidence or the first witness being sworn, the
 148 prosecuting attorney shall advise the grand jury of the laws applicable to the conduct of
 149 such proceedings, all relevant sections of the Code relating to the crime or crimes alleged
 150 in the bill of indictment, and any Code section that excuses or justifies such conduct. In
 151 particular, the grand jury shall be advised of Code Sections 16-3-20, ~~16-3-21~~, ~~16-3-23.1~~,
 152 16-3-23, 16-3-24, and 17-4-20."

153 **SECTION 2-6.**

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

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

161 **SECTION 2-7.**

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

165 "51-1-30.4.

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

176 **PART III.**

177 **SECTION 3-1.**

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

181 **SECTION 3-2.**

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