

SENATE BILL 2736

By Niceley

AN ACT to amend Tennessee Code Annotated, Title 39,
relative to use of force.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act is known and may be cited as the "Judge Mike Carter Defense Protection Act."

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 11, Part 6, is amended by adding the following new section:

39-11-617.

(a) A person who uses force as permitted by §§ 39-11-611 – 39-11-616, § 39-11-620, § 39-11-621, § 39-17-1322, or under any other applicable common law or statutory provisions addressing the justifiable use of force, is immune from criminal prosecution for the use of such force, unless:

(1) The person against whom force was used is a law enforcement officer acting in the scope of the officer's official duties, and the person using force knew or reasonably should have known that the person was a law enforcement officer; or

(2) The force used by the person resulted in the death or injury of an innocent bystander or other person against whom the force was not justified, in which case the immunity does not apply to a criminal prosecution related to the death or injury of the innocent bystander or other person against whom force was not justified.

(b) As used in this section, "defendant":

(1) Means a person who uses or threatens to use force and asserts that the force used or threatened was justified; and

(2) Includes any other person charged with, acting in concert with, or having criminal responsibility for a person who uses or threatens to use force.

(c) A defendant may raise a justified use of force claim by submitting a written statement in a letter from the defendant or the defendant's attorney. The letter must be addressed to one (1) or more of the investigating law enforcement officers, the district attorney for the jurisdiction, or, if criminal charges have been filed, to the clerk for a court in which charges have been filed. The defendant is not required to include any declaration or statement other than a statement that the defendant asserts that the use of force was justified.

(d) When a defendant or a defendant's agent raises a justification for the use of force or evidence of justification or self-defense is brought to the attention of or observed by law enforcement:

(1) The appropriate law enforcement agency shall conduct a full investigation of the potential defense of justification;

(2) All evidence of the investigation must be preserved; and

(3) At the conclusion of the investigation, the investigating officer shall generate a discoverable report of evidence relevant to the justification claim.

(e) The law enforcement agency shall not charge or arrest the person for an offense based on the use of force, including a charge of being an accessory, unless the law enforcement agency, at the time of such charge or arrest, has determined that there is probable cause to believe that the force used was unlawful and that there is not probable cause to believe that the use of force was justified. If a law enforcement officer seeks to charge or arrest the person for an offense based on the use of force, then the

officer must include as an affirmative element of the charging affidavit that the officer has complied with the requirements of this subsection (e) and that based on the officer's investigation there is not probable cause to believe that the defendant's use of force was justified.

(f) A prosecutor shall not commence or continue a criminal prosecution for a criminal offense based on an alleged unlawful use of force, including a charge of being an accessory, before determining whether there is probable cause to believe that the use of force was unlawful and whether there is probable cause to believe that, based on a consideration of all the facts and available testimony, the state can prevail in negating any defense of justification at trial.

(g)

(1) If a law enforcement agency obtains an arrest warrant prior to consulting with the district attorney general, then the district attorney general must make the evaluations required by subsection (f) before proceeding with the prosecution.

(2) If a law enforcement agency consults with the district attorney general before seeking an arrest warrant, then the district attorney general must make the evaluations required by subsection (f) before the affidavit of complaint is submitted and the affidavit of complaint shall comply with subdivision (e).

(3) In any instance in which a grand jury indictment is sought on a matter involving the alleged unlawful use of force, including a charge of being an accessory, the entity or individual presenting the matter to the grand jury shall:

(A) Make the evaluations required by subsection (f) before presenting the matter to the grand jury;

(B) Advise the grand jury that a claim of justification has been or may be raised;

(C) Present to the grand jury for its consideration any evidence or testimony that is at that time available to the entity or individual on the issue of justification; and

(D) Advise the grand jury that it is entitled to ask for any additional evidence or testimony that it may desire on the case under consideration.

(h)

(1) Prior to the commencement of a trial, the defendant may make a motion for a justified use of force hearing. Upon the defendant's motion, the trial court shall conduct a hearing to determine whether the force used by the defendant was justified under applicable law. The defendant must file a motion under this subdivision (h)(1) no less than ninety (90) days prior to trial.

(2) If the defendant moves for a justified use of force hearing or upon the court's own motion, then the court must expedite the hearing and issue a decision within thirty (30) days of hearing the motion. The defendant is entitled to at least one (1) hearing following the conclusion of discovery.

(3) The sole issue at the justified use of force hearing is whether the defendant used force or threatened the use of force in a manner that is justified by applicable law and is immune from criminal prosecution under this section.

(4) If the defendant chooses to testify at the hearing, the defendant's testimony must not be used for any reason other than the consideration of the hearing or for impeachment at trial should the defendant testify at trial.

(5) Once the defendant establishes a prima facie case that the use of force or threatened use of force was justified under applicable law, the burden of

proof shifts to the state to demonstrate by clear and convincing evidence that the use of force or threatened use of force was not justified.

(6) In ruling on a justified use of force hearing, if the court concludes that the prosecutor has failed to prove by clear and convincing evidence that the use of force or threatened use of force was not justified, then the court must enter an order dismissing the criminal charges as to which the justification was claimed.

(7) If the court does not rule in favor of the defendant following a justified use of force hearing, then the defendant is not precluded from asserting at any other point in the case that the use of force or threatened use of force was justified. Notwithstanding another law to the contrary, once the issue of justification has been raised by the defendant, the state bears the burden of proof at trial to prove beyond a reasonable doubt all of the elements of the charged conduct and to negate the claim that the use of force was justified.

(8) The prosecution shall not present evidence at trial that was not presented in a use of force hearing if such hearing was held. If the court does not dismiss the charges following a justified use of force hearing and the state subsequently obtains testimony or other evidence relevant to negating the claim that the use of force or threatened use of force was justified, then the state may move the court for relief from this subdivision (h)(8) by showing to the court by sworn testimony that:

(A) The specifics of the proposed testimony or evidence that is the subject of the motion;

(B) The proposed testimony or evidence was unknown to the state, including any investigating officers, at the time of the use of force hearing;

(C) The proposed testimony or evidence is not duplicative of other testimony or evidence that was known to the state at the time of the use of force hearing;

(D) The proposed testimony or evidence is relevant and admissible evidence; and

(E) That there is otherwise good cause for the court to grant relief in favor of the state under this subdivision (h)(8). If the court finds by clear and convincing evidence that a waiver is justified in order to allow such additional evidence or testimony, then the court must set forth in its order its factual findings on the issue of good cause and shall specifically state the details of the testimony or evidence that is to be allowed pursuant to the waiver. If the court grants a waiver under this subdivision (h)(8), then the court must also grant to the defendant a continuance in the trial date and any pretrial deadlines, which continuance must be not less than one hundred twenty (120) additional days. If the state makes a motion for waiver after the trial has commenced and the court grants the waiver or any portion of it, then the court must also immediately declare a mistrial at the request of the defendant.

(i) If the court dismisses the criminal prosecution relative to the use of force charges pursuant to subsection (h) and such dismissal becomes final or if the defendant is acquitted of the use of force charges following a trial or appeal, then the defendant may file a civil action in the county in which the criminal charges were brought against the district attorney and the county seeking an award of attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in the defense of the criminal prosecution. In the civil action, the court shall award such fees

and other elements of damage if it finds that the use of force charges in the criminal case were dismissed by the criminal court based on a hearing under subsection (h) or that the defendant was acquitted of the use of force charges at trial or on appeal. Any such civil award must be paid by the county in which the charges were initially filed.

SECTION 3. Tennessee Code Annotated, Section 39-11-620, is amended by adding the following new subsection:

(c) A law enforcement officer who uses or threatens to use force pursuant to this section may raise any defense of justification pursuant to § 39-11-617.

SECTION 4. Tennessee Code Annotated, Section 39-17-1322(a), is amended by deleting the subsection and substituting instead:

(a) A person must not be charged with or convicted of a violation under this part if the person possessed, displayed, or employed a weapon in justifiable self-defense or in justifiable defense. A person who has been charged with a violation under this part is entitled to any available relief under § 39-11-617.

SECTION 5. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 6. This act takes effect upon becoming a law, the public welfare requiring it.