

House Bill 1226

By: Representatives Clark of the 100<sup>th</sup>, Smith of the 18<sup>th</sup>, Ridley of the 22<sup>nd</sup>, Powell of the 33<sup>rd</sup>, Bonner of the 73<sup>rd</sup>, 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 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:

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

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

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)(1) In a prosecution for any offense prohibited under Chapter 5 of this title, if a  
46 defendant raises as a defense a justification provided by subsection (a) of this Code  
47 section, the defendant may offer relevant evidence that the defendant had been subjected  
48 to acts of family violence, dating violence, or child abuse committed by the alleged  
49 victim, as such acts are described in Code Sections 19-13-1, 19-13A-1, and 19-15-1,  
50 respectively, in order to establish the defendant's reasonable belief that the threat or use  
51 of force or deadly force was immediately necessary.

52 (2) Relevant evidence includes, but is not limited to:

53 (A) Evidence pertaining to the alleged victim's prior acts, including, but not limited to:

54 (i) Evidence indicating the defendant sought law enforcement assistance;

55 (ii) Evidence indicating the defendant sought services from a counselor, social  
56 worker, domestic violence program, or other relevant agency or service provider;

57 (iii) Evidence indicating the defendant sought medical attention;

58 (iv) Evidence of the effects of battering and post-traumatic stress disorder on the  
59 defendant; and

60 (v) Temporary protective order petitions, ex parte orders, and final orders in which  
61 the alleged victim is the respondent;

62 (B) Expert testimony, including, but not limited to, testimony as to relevant facts and  
63 circumstances relating to the family violence, dating violence, or child abuse, as such  
64 acts are described in Code Sections 19-13-1, 19-13A-1, and 19-15-1, respectively, that  
65 are the bases of such expert's opinion; and

66 (C) Any other evidence the court determines is of sufficient credibility or probative  
67 value.

68 (3) Evidence introduced under this subsection shall be subject to Code Sections  
69 24-4-401, 24-4-402, and 24-4-403."

70 **SECTION 2.**

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

73 "16-3-24.2.

74 (a) A person who uses threats or force in accordance with Code Section 16-3-20, 16-3-21,  
75 16-3-23, 16-3-23.1, 16-3-24, or 17-4-20 shall be immune from criminal prosecution  
76 therefor unless in the use of deadly force, such person utilizes a weapon the carrying or  
77 possession of which is unlawful by such person under Part 2 of Article 4 of Chapter 11 of  
78 this title.

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

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

87 **SECTION 3.**

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

90 "51-11-9.

91 A person who is justified in threatening or using force against another under the provisions  
92 of Code Section 16-3-20, relating to justification as a defense, Code Section 16-3-21,  
93 relating to the use of force in defense of self or others, Code Section 16-3-23, relating to  
94 the use of force in defense of a habitation, Code Section 16-3-24, relating to the use of  
95 force in defense of property other than a habitation, or Code Section 17-4-20, relating to

96 arrests and use of force by law enforcement officers, has no duty to retreat from the use of  
97 such force and shall not be held liable to the person against whom the use of force was  
98 justified, to any legal representative or heir of such person, or to any person acting as an  
99 accomplice or assistant to such person in any civil action brought as a result of the threat  
100 or use of such force."

101 **SECTION 4.**

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