

Senate Bill 572

By: Senators Strickland of the 42nd, Anavitarte of the 31st, Robertson of the 29th, McNeel of the 18th, Hatchett of the 50th and others

AS PASSED SENATE

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 provide for
3 an additional 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 provide for an effective date; to repeal conflicting
10 laws; and for other purposes.

11 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

12 **SECTION 1.**

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

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17 "16-3-21.

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

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

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

31 (2) Is attempting to commit, committing, or fleeing after the commission or attempted
32 commission of a felony; or

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

37 (4) Used or threatened force against a law enforcement officer acting in the performance
38 of his or her official duties and such officer properly identified himself or herself in
39 accordance with law or the person who used or threatened force knew or reasonably
40 should have known that the person was a law enforcement officer and the force used or
41 threatened occurred in a location readily accessible to the public or a place of public
42 accommodation.

43 (c) Any rule, regulation, or policy of any agency of the state or any ordinance, resolution,
44 rule, regulation, or policy of any county, municipality, or other political subdivision of the
45 state which is in conflict with this Code section shall be null, void, and of no force and
46 effect.

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

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

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

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

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

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

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

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

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

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

70 (3) Evidence introduced under this subsection shall be subject to Code Sections
71 24-4-401, 24-4-402, and 24-4-403."

72 **SECTION 2.**

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

75 "16-3-24.2.

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

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

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

89 **SECTION 3.**

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

92 "51-11-9.

93 A person who is justified in threatening or using force against another under the provisions
94 of Code Section 16-3-20, relating to justification as a defense, Code Section 16-3-21,

95 relating to the use of force in defense of self or others, Code Section 16-3-23, relating to
96 the use of force in defense of a habitation, Code Section 16-3-24, relating to the use of
97 force in defense of property other than a habitation, or Code Section 17-4-20, relating to
98 arrests and use of force by law enforcement officers, has no duty to retreat from the use of
99 such force and shall not be held liable to the person against whom the use of force was
100 justified, to any legal representative or heir of such person, or to any person acting as an
101 accomplice or assistant to such person in any civil action brought as a result of the threat
102 or use of such force."

103 **SECTION 4.**

104 This Act shall become effective upon its approval by the Governor or upon its becoming law
105 without such approval.

106 **SECTION 5.**

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