

SUBSTITUTE FOR HB202

SYNOPSIS:

Under existing law, a peace officer is protected from tort liability arising out of his or her conduct in performance of any discretionary function within the line and scope of his or her law enforcement duties.

Under court precedents interpreting existing law, a peace officer is not entitled to this protection when he or she acts willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law.

This bill would repeal existing law concerning peace officer immunity and establish a new form of legal protection for law enforcement officers. This new protection would foreclose any claim that seeks to impose civil liability against a law enforcement officer premised on conduct performed within his or her discretionary authority unless: (1) the law enforcement officer acted recklessly without law enforcement justification or (2) the conduct violated a clearly established state statutory or constitutional right of the plaintiff. This bill would also establish a heightened pleading standard and an automatic stay of

proceedings to remain in effect while the law enforcement officer seeks to establish that the protection applies.

This bill would also provide that a law enforcement officer is justified in, and immune from criminal prosecution for, the use of physical force against a person in the performance of conduct within his or her discretionary authority unless the use of force violates the person's constitutional rights to be free from excessive force. The bill would entitle a law enforcement officer to a pretrial hearing to establish the applicability of this protection. The bill would also provide for an automatic stay of any criminal prosecution while the law enforcement officer seeks to establish that the protection applies.

A BILL
TO BE ENTITLED
AN ACT

Relating to law enforcement officers; to establish immunity for law enforcement officers from civil liability; to establish immunity for law enforcement officers from criminal prosecution; to provide exceptions to such immunities; to provide procedures for asserting such immunities; to amend Sections 13A-3-20, 13A-3-27, 13A-3-28, 14-6-1, and 36-22-3

Code of Alabama 1975; to repeal Section 6-5-338, relating to peace officer immunity.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 6-5-338.1, 6-5-338.2, 6-5-338.3, and 6-5-338.4 are added to Article 18, Chapter 5, of Title 6 of the Code of Alabama 1975, to read as follow:

“§6-5-338.1

For purposes of Section 6-5-338.2, 6-5-338.3, and 6-5-338.4, the following terms have the following meanings unless the context dictates otherwise:

(1) CLEARLY ESTABLISHED. A state statutory or constitutional right is clearly established, and a reasonable law enforcement officer would have known of it, in any of the following circumstances:

a. The right is clear from a materially similar case decided before the occurrence of the relevant conduct by the United States Supreme Court, the Eleventh Circuit Court of Appeals, or the Alabama Supreme Court.

b. The right is clear from a broad statement of principle that is established with so obvious clarity by one of the courts identified in the preceding paragraph that, before the occurrence of the relevant conduct, every objectively reasonable law enforcement officer facing the circumstances would have known that the relevant conduct violated the right.

78 c. The right is so obvious from the text of a state
79 constitutional provision or statute that, before the
80 occurrence of the relevant conduct, no objectively reasonable
81 law enforcement officer would have required case law to be put
82 on notice that the relevant conduct violated the right.

83 (2) CONDUCT PERFORMED WITHIN A LAW ENFORCEMENT
84 OFFICER'S DISCRETIONARY AUTHORITY. Governmental conduct by a
85 law enforcement officer performing a legitimate job-related
86 function or performing a legitimate job-related goal through
87 means that were within the law enforcement officer's plausible
88 power to utilize. In determining whether governmental conduct
89 was performed within a law enforcement officer's discretionary
90 authority, a court must temporarily put aside that the conduct
91 may have been committed for an improper or unconstitutional
92 purpose, in an improper or unconstitutional manner, to an
93 improper or unconstitutional extent, or under improper or
94 constitutionally inappropriate circumstances. The court must
95 determine whether, if done for a proper purpose, the conduct
96 was within, or reasonably related to, the outer perimeter of a
97 law enforcement officer's governmental discretion in
98 performing his or her official duties.

99 (3) DETENTION FACILITY OFFICER. Any peace officer,
100 guard, or detention or jail officer employed in a facility

101 used for the confinement, pursuant to law, of any of the
102 following persons:

- 103 a. Someone charged with or convicted of an offense.
- 104 b. Someone charged with being or adjudicated a youthful
105 offender, a neglected minor, or juvenile delinquent.
- 106 c. Someone held for extradition.
- 107 d. Someone otherwise confined pursuant to an order of a
108 court.

109 (4) LAW ENFORCEMENT OFFICER. Any peace officer or
110 tactical medic, except a constable, who is employed or
111 appointed pursuant to the Constitution or statutes of this
112 state, whether appointed or employed as a peace officer or
113 tactical medic by the state or a county or municipality
114 thereof, or by an agency or institution, corporate or
115 otherwise, created pursuant to the Constitution or laws of
116 this state and authorized by the Constitution or laws to
117 appoint or employ police officers or other peace officers or
118 tactical medics, and whose duties prescribed by law, or by the
119 lawful terms of their employment or appointment, include the
120 enforcement of, or the investigation and reporting of
121 violations of, the criminal laws of this state, or who is
122 empowered by the laws of this state to execute warrants, to
123 arrest and to take into custody persons who violate, or who
124 are lawfully charged by warrant, indictment, or other lawful

process, with violations of, the criminal laws of this state. The term includes a detention facility officer. The term includes a public safety dispatcher.

(5) RECKLESSLY WITHOUT LAW ENFORCEMENT JUSTIFICATION. A law enforcement officer acts recklessly without law enforcement justification if he or she is aware of, and consciously disregards, a risk of death or substantial bodily injury without reasonable law enforcement justification. A law enforcement officer who creates a risk of death or substantial bodily injury in the absence of reasonable law enforcement justification but is unaware of that risk by reason of voluntary intoxication, as defined in subdivision (e)(2) of Section 13A-3-2, acts recklessly with respect thereto. Whether a law enforcement officer acts recklessly without law enforcement justification is a question of law to be decided by the court, taking into account the wide range of a law enforcement officer's duties and constraints, both legal and practical, within which a law enforcement officer must act. A law enforcement officer acts without law enforcement justification when the law enforcement officer harms the plaintiff by failing, in an objectively unreasonable manner, to comply with written policies of the law enforcement officer's employer or appointing authority or when the law enforcement officer harms the plaintiff through conduct

149 premised on the law enforcement officer's objectively
150 unreasonable interpretation of such a policy.

151 (6) TACTICAL MEDIC. A firefighter paramedic or
152 firefighter emergency medical technician licensed by the State
153 of Alabama and employed by the state or a county or
154 municipality within the state, operating on-duty in direct
155 support of a tactical law enforcement unit to provide medical
156 services at high risk incidents, including hostage incidents,
157 narcotic raids, hazardous surveillance, sniper incidents,
158 armed suicidal persons, barricaded suspect, felony warrant
159 service, and fugitives refusing to surrender.

160 (7) WRITTEN POLICY. A written rule, regulation,
161 instruction, or directive issued by a law enforcement
162 officer's employer or appointing authority, and applicable to
163 conduct within a law enforcement officer's discretionary
164 authority, specifying the particular manner in which a law
165 enforcement officer should exercise discretion in specific
166 situations or scenarios. The written rule, regulation,
167 instruction, or directive must have been issued before the
168 occurrence of the relevant conduct, and must have been made
169 available to the law enforcement officer. Whether the law
170 enforcement officer actually read the written rule,
171 regulation, instruction, or directive is not determinative.

172 "§6-5-338.2

173 (a) Except as provided in subsection (b), a law
174 enforcement officer shall be immune from any claim that seeks
175 to impose civil liability on the law enforcement officer for
176 conduct performed within a law enforcement officer's
177 discretionary authority.

178 (b) A law enforcement officer shall not be immune in
179 either of the following circumstances:

180 (1) The conduct constitutes a tort against the
181 plaintiff that is actionable under the laws of this State and
182 the law enforcement officer acted recklessly without law
183 enforcement justification.

184 (2) The conduct constitutes a tort against the
185 plaintiff that is actionable under the laws of this State and
186 the conduct violated a clearly established state statutory or
187 constitutional right of the plaintiff of which every
188 reasonable law enforcement officer would have known at the
189 time of the law enforcement officer's conduct.

190 (c) In any civil action against a law enforcement
191 officer in his or her personal or individual capacity premised
192 on conduct performed within the law enforcement officer's
193 discretionary authority, the complaint must identify with
194 particularity, for each defendant and for each claim, each of
195 the following:

196 (1) The legal authority that assertedly creates the
197 claim against the law enforcement officer.

198 (2) Specific factual allegations to satisfy each
199 element of each asserted claim.

200 (3) Specific factual allegations demonstrating that the
201 law enforcement officer lacks immunity pursuant to subsection
202 (a) .

203 (d) In any civil action against a law enforcement
204 officer in his or her personal or individual capacity premised
205 on conduct performed within the law enforcement officer's
206 discretionary authority, the court shall promptly dismiss any
207 claim for which either of the following is true:

208 (1) The complaint lacks the legal and factual
209 particularity required under subsection (c), as long as the
210 law enforcement officer, or his or her employer or appointing
211 authority, has complied with any valid discovery request made
212 pursuant to subdivision (e) (2) and the Alabama Rules of Civil
213 Procedure and validly served no later than fourteen days after
214 the law enforcement officer first appears or otherwise defends
215 against the lawsuit.

216 (2) The complaint's factual allegations, taken as true,
217 fail to overcome the immunity established by subsection (a) .

218 (e) (1) Except as provided in subdivision (2), the
219 pendency of a motion to dismiss pursuant to subsection (d)

shall automatically stay the obligation of any party or non-party to make disclosures or respond to discovery requests of any kind unless a party establishes any of the following:

a. The motion to dismiss is frivolous.

b. A response to a particularized discovery request is necessary to preserve evidence.

c. An exception to the stay is necessary to prevent undue prejudice to prevent a failure or delay of justice within the meaning of Alabama Rule of Civil Procedure 27(a)(3).

(2) The automatic stay of discovery provided by subdivision (1) does not prohibit the plaintiff from seeking production of any written policies governing the law enforcement officer's conduct at the time of the specific events identified in the complaint. Nothing in this act shall be construed as addressing whether a written policy is a public record for purposes of Section 36-12-40 et seq., and nothing in this act shall preclude the entry of a protective order prohibiting public disclosure of such a written policy.

(3) Unless otherwise ordered by the court, during the pendency of the stay established by this section, the legal responsibilities of the parties concerning the preservation of evidence shall continue.

(f) A law enforcement officer may seek entry of dismissal or judgment as a matter of law, including summary judgment, on grounds that he or she is immune pursuant to subsection (a) as allowed under the Alabama Rules of Civil Procedure.

(g) (1) A law enforcement officer asserting immunity under subsection (a) bears the burden of establishing that the claim is premised on conduct performed within the law enforcement officer's discretionary authority as that term is defined in section 1(2).

(2) Once the law enforcement officer satisfies his or her burden under subdivision (1), the burden shifts to the plaintiff to establish that the law enforcement officer committed a tort against the plaintiff that is actionable under the laws of this State and that the law enforcement officer is not immune pursuant to subsection (b).

"§6-5-338.3

(a) The improper denial of a motion to dismiss or motion for judgment as a matter of law, including a motion for summary judgment, based on the immunity provided under Section 2(a), or any action improperly allowing discovery in violation of Section 2(e), shall entitle a law enforcement officer to mandamus relief from the Alabama Supreme Court. Any petition for a writ of mandamus pursuant to this subsection shall be filed pursuant to the Alabama Rules of Appellate Procedure.

(b) The filing of a petition for a writ of mandamus shall automatically stay further proceedings in the trial court unless, and to the extent that, the court validly finds upon motion of any party that further proceedings are necessary to prevent irreparable harm to the plaintiff.

“§6-5-338.4

(a) The protections afforded a law enforcement officer under this act apply to any cause of action that accrued on or after the effective date of this act.

(b) The protections available to law enforcement officers under this act are in addition to, and supplemental of, any protections available to a law enforcement officer pursuant to Section 36-1-12, Section 36-22-3, Section 14-6-1, Article I, Section 14 of the Alabama Constitution of 2022, or any other source of law unless expressly repealed or modified by this act.

(c) This act is intended to extend immunity only to a law enforcement officer for conduct performed within a law enforcement officer's discretionary authority and to the law enforcement officer's employer or appointing authority. No immunity is extended to any private non-governmental person or entity, including any private employer of a law enforcement officer during that officer's off-duty hours.

(d) Every private, non-governmental person or entity who hires a law enforcement officer during that officer's

off-duty hours to perform any type of security work or to work while in the uniform of a law enforcement officer shall have in force at least \$500,000 of liability insurance, which insurance must indemnify for acts the off-duty law enforcement officer takes within the line and scope of the private employment or contract. The failure to have in force the insurance required by this subsection shall make every individual employer, every general partner of a partnership employer, every member of an unincorporated association employer, and every officer of a corporate employer individually liable for all acts taken by the off-duty law enforcement officer within the line and scope of the private employment or contract."

Section 2. Sections 14-6-1 and 36-22-3, Code of Alabama 1975, are amended as follows:

"§14-6-1

The sheriff has the legal custody and charge of the jail in his or her county and all prisoners committed thereto, except in cases otherwise provided by law. The sheriff may employ persons to carry out his or her duty to operate the jail and supervise the inmates housed therein for whose acts he or she is civilly responsible. Persons so employed by the sheriff shall be acting for and under the direction and supervision of the sheriff and shall be entitled to the same immunities and legal protections granted to the sheriff under the general laws and the Constitution of Alabama of ~~1901~~ 2022,

as long as such ~~persons are acting within the line and scope~~
~~of their duties and are acting in compliance with the law~~
conduct is conduct performed within his or her discretionary
authority as defined in Section 1 of the Act adding this
amendment."

"§36-22-3

(a) It shall be the duty of the sheriff:

(1) To execute and return the process and orders of the
courts of record of this state and of officers of competent
authority with due diligence when delivered to him or her for
that purpose, according to law.

(2) To attend upon the circuit courts and district
courts held in his or her county when in session and the
courts of probate, when required by the judge of probate, and
to obey the lawful orders and directions of such courts.

(3) To, three days before each session of the circuit
court in his or her county, render to the county treasury or
custodian of county funds a statement in writing and on oath
of the moneys received by him or her for the county,
specifying the amount received in each case, from whom and pay
the amount to the county treasurer or custodian of county
funds.

(4) To, with the assistance of deputies as necessary,
ferret out crime, apprehend and arrest criminals and, insofar
as within their power, secure evidence of crimes in their
counties and present a report of the evidence so secured to
the district attorney or assistant district attorney for the
county.

(5) To perform such other duties as are or may be imposed by law.

(b) Any of the duties of the sheriff set out in subsection (a) or as otherwise provided by law may be carried out by deputies, reserve deputies, and persons employed as authorized in Section 14-6-1 as determined appropriate by the sheriff in accordance with state law. Persons undertaking such duties for and under the direction and supervision of the sheriff shall be entitled to the same immunities and legal protections granted to the sheriff under the general laws and the Constitution of Alabama of ~~1901~~ 2022, as long as ~~he or she is acting within the line and scope of his or her duties and is acting in compliance with the law~~ such conduct is conduct performed within his or her discretionary authority as defined in Section 1 of the Act adding this amendment.

(c) Notwithstanding the provisions of Sections 14-6-1, 32-7-23, and this section, nothing in Section 14-6-1 and this section shall serve as a bar to an individual's or entity's recovery under the uninsured motorist coverage of the individual or entity, or prevent an insured from being legally entitled to recover damages under the uninsured motorist coverage of the insured."

Section 3. Sections 13A-3-20, 13A-3-27, and 13A-3-28 Code of Alabama 1975, are amended as follows:

"§13A-3-20

The following definitions are applicable to this article:

(1) BUILDING. Any structure which may be entered and

utilized by persons for business, public use, lodging, or the storage of goods, and includes any vehicle, aircraft, or watercraft used for the lodging of persons or carrying on business therein. Each unit of a building consisting of two or more units separately occupied or secured is a separate building.

(2) CONDUCT PERFORMED WITHIN A LAW ENFORCEMENT OFFICER'S DISCRETIONARY AUTHORITY. Governmental conduct by a law enforcement officer performing a legitimate job-related function or performing a job-related goal through means that were within the law enforcement officer's plausible power to utilize. In determining whether governmental conduct was performed within a law enforcement officer's discretionary authority, a court must temporarily put aside that the conduct may have been committed for an improper or unconstitutional purpose, in an improper or unconstitutional manner, to an improper unconstitutional extent, or under improper or constitutionally inappropriate circumstances. The court must determine whether, if done for a proper purpose, the conduct was within, or reasonably related to, the outer perimeter of a law enforcement officer's governmental discretion in performing his or her official duties.

(23) DEADLY PHYSICAL FORCE. Force which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.

(4) DETENTION FACILITY OFFICER. Any guard or detention or jail officer who, in the exercise of his or her discretionary authority, is authorized to use physical force

against persons and who is employed in a facility used for the
confinement, pursuant to law, of any of the following persons:

a. Someone charged with or convicted of an offense.

b. Someone charged with being or adjudicated a youthful
offender, a neglected minor, or juvenile delinquent.

c. Someone held for extradition.

d. Someone otherwise confined pursuant to an order of a
court.

(~~3~~5) DWELLING. A building which is usually occupied by
a person lodging therein at night, or a building of any kind,
including any attached balcony, whether the building is
temporary or permanent, mobile or immobile, which has a roof
over it, and is designed to be occupied by people lodging
therein at night.

(~~4~~6) FORCE. Physical action or threat against another,
including confinement.

(7) LAW ENFORCEMENT OFFICER. Any peace officer or
detention facility officer.

(~~5~~8) PREMISES. The term includes any building, as
defined in this section, and any real property.

(~~6~~9) RESIDENCE. A dwelling in which a person resides
either temporarily or permanently or is visiting as an invited
guest.

(~~7~~10) VEHICLE. A motorized conveyance which is designed
to transport people or property."

"§13A-3-27

~~(a) A peace officer is justified in using that degree~~

~~of physical force which he reasonably believes to be
necessary, upon a person in order:~~

~~(1) To make an arrest for a misdemeanor, violation or
violation of a criminal ordinance, or to prevent the escape
from custody of a person arrested for a misdemeanor, violation
or violation of a criminal ordinance, unless the peace officer
knows that the arrest is unauthorized; or~~

~~(2) To defend himself or a third person from what he
reasonably believes to be the use or imminent use of physical
force while making or attempting to make an arrest for a
misdemeanor, violation or violation of a criminal ordinance,
or while preventing or attempting to prevent an escape from
custody of a person who has been legally arrested for a
misdemeanor, violation or violation of a criminal ordinance.~~

~~(b) A peace officer is justified in using deadly
physical force upon another person when and to the extent that
he reasonably believes it necessary in order:~~

~~(1) To make an arrest for a felony or to prevent the
escape from custody of a person arrested for a felony, unless
the officer knows that the arrest is unauthorized; or~~

~~(2) To defend himself or a third person from what he
reasonably believes to be the use or imminent use of deadly
physical force.~~

~~(c) Nothing in subdivision (a) (1), or (b) (1), or (f) (2)
constitutes justification for reckless or criminally negligent
conduct by a peace officer amounting to an offense against or
with respect to persons being arrested or to innocent persons
whom he is not seeking to arrest or retain in custody.~~

~~(d) A peace officer who is effecting an arrest pursuant to a warrant is justified in using the physical force prescribed in subsections (a) and (b) unless the warrant is invalid and is known by the officer to be invalid.~~

(a) A law enforcement officer shall be justified in making any use of physical force against a person if the use of force is conduct performed within the law enforcement officer's discretionary authority and does not constitute excessive force as provided in subsection (b).

(b) No law enforcement officer shall be justified, as provided in this section, for any use of physical force against a person if the use of force violates that person's rights, under the Constitution of Alabama or the Constitution of the United States, to be free from excessive force.

(ec) Except as provided in subsection ~~(fd)~~, a person who has been directed by a ~~peace officer~~ law enforcement officer to assist him to effect an arrest or to prevent an escape from custody is justified in using physical force when and to the extent that he reasonably believes that force to be necessary to carry out the ~~peace officer's~~ law enforcement officer's direction.

~~(fd)~~ A person who has been directed to assist a ~~peace officer~~ law enforcement officer under circumstances specified in subsection (ec) may use deadly physical force to effect an arrest or to prevent an escape only when:

(1) He reasonably believes that force to be necessary to defend himself or a third person from what he reasonably

believes to be the use or imminent use of deadly physical force; or

(2) He is authorized by the ~~peace officer~~ law enforcement officer to use deadly physical force and does not know that the ~~peace officer~~ law enforcement officer himself is not authorized to use deadly physical force under the circumstances.

(~~g~~e) A private person acting on his own account is justified in using physical force upon another person when and to the extent that he reasonably believes it necessary to effect an arrest or to prevent the escape from custody of an arrested person whom he reasonably believes has committed a felony and who in fact has committed that felony, but he is justified in using deadly physical force for the purpose only when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

~~(h) A guard or peace officer employed in a detention facility is justified:~~

~~(1) In using deadly physical force when and to the extent that he reasonably believes it necessary to prevent what he reasonably believes to be the escape of a prisoner accused or convicted of a felony from any detention facility, or from armed escort or guard;~~

~~(2) In using physical force, but not deadly physical force, in all other circumstances when and to extent that he reasonably believes it necessary to prevent what he reasonably believes to be the escape of a prisoner from a detention~~

513 ~~facility.~~

514 ~~(3) "Detention facility" means any place used for the~~
515 ~~confinement, pursuant to law, of a person:~~

516 ~~a. Charged with or convicted of an offense; or~~

517 ~~b. Charged with being or adjudicated a youthful~~
518 ~~offender, a neglected minor or juvenile delinquent; or~~

519 ~~c. Held for extradition; or~~

520 ~~d. Otherwise confined pursuant to an order of a~~
521 ~~criminal court.~~

522 (f) (1) A person who uses force, including deadly physical
523 force, as justified and permitted in this section is immune
524 from criminal prosecution for the use of such force, unless
525 the force is determined to be unlawful under this section.

526 (2) Prior to the commencement of a trial in a case in
527 which a defense is claimed under this section, the court
528 having jurisdiction over the case, upon motion of the
529 defendant, shall conduct a pretrial hearing to determine
530 whether force, including deadly force, used by the defendant
531 was justified or was unlawful under this section. During any
532 pretrial hearing to determine immunity, the defendant must
533 show by a preponderance of the evidence that he or she is
534 immune from criminal prosecution.

535 (3) After a pretrial hearing under subdivision (2), the
536 case shall not proceed to trial until the court enters a
537 written order setting forth reasons that the defendant lacks
538 immunity from criminal prosecution under this section. If the

539 court concludes that the defendant has proven by a
540 preponderance of the evidence that force, including deadly
541 force, was justified, the court shall enter an order finding
542 the defendant immune from criminal prosecution under this
543 section and dismissing the criminal charges.

544 (4) If the defendant does not meet his or her burden of
545 proving immunity at the pretrial hearing, he or she may
546 continue to pursue justification and immunity under this
547 section as a defense at trial. Once the issue of justification
548 and immunity under this section has been raised by the
549 defendant, the state continues to bear the burden of proving
550 beyond a reasonable doubt all of the elements of the charged
551 conduct.

552 (g) (1) A court order improperly denying immunity under
553 this section, entered after the pretrial hearing provided
554 under subsection (f), shall entitle the defendant to mandamus
555 relief from the Alabama Supreme Court. Any petition for a writ
556 of mandamus pursuant to this subsection shall be filed
557 pursuant to the Alabama Rules of Appellate Procedure.

558 (2) The filing of a petition for a writ of mandamus
559 pursuant to subdivision (1) shall automatically stay further
560 proceedings in the trial court. The stay shall remain in
561 effect while the mandamus petition remains pending.

562 (h) A law enforcement agency may use standard
563 procedures for investigating the use of force described in

subsection (a), but the agency may not arrest the person for using force unless it determines that there is probable cause that the force used was unlawful under this section."

"§13A-3-28

A person may not use physical force to resist a lawful arrest by a ~~peace officer~~ law enforcement officer who is known or reasonably appears to be a ~~peace officer~~ law enforcement officer."

Section 4. Section 6-5-338, relating to peace officer immunity, is hereby repealed.

Section 5. This act shall become effective on October 1, 2025.