

HB202 ENGROSSED



1 HB202
2 9JJGIMB-2
3 By Representative Reynolds
4 RFD: Judiciary
5 First Read: 05-Feb-25



HB202 Engrossed

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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:



HB202 Engrossed

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

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

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

40 c. The right is so obvious from the text of a state
41 constitutional provision or statute that, before the
42 occurrence of the relevant conduct, no objectively reasonable
43 law enforcement officer would have required case law to be put
44 on notice that the relevant conduct violated the right.

45 (2) CONDUCT PERFORMED WITHIN A LAW ENFORCEMENT
46 OFFICER'S DISCRETIONARY AUTHORITY. Governmental conduct by a
47 law enforcement officer performing a legitimate job-related
48 function or pursuing a legitimate job-related goal through



HB202 Engrossed

49 means that were within the law enforcement officer's plausible
50 power to utilize. In determining whether governmental conduct
51 was performed within a law enforcement officer's discretionary
52 authority, a court must temporarily put aside that the conduct
53 may have been committed for an improper or unconstitutional
54 purpose, in an improper or unconstitutional manner, to an
55 improper or unconstitutional extent, or under improper or
56 constitutionally inappropriate circumstances. The court must
57 determine whether, if done for a proper purpose, the conduct
58 was within, or reasonably related to, the outer perimeter of a
59 law enforcement officer's governmental discretion in
60 performing his or her official duties.

61 (3) DETENTION FACILITY OFFICER. Any peace officer,
62 guard, or detention or jail officer employed in a facility
63 used for the confinement, pursuant to law, of any of the
64 following persons:

65 a. Someone charged with or convicted of an offense.

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

68 c. Someone held for extradition.

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

71 (4) LAW ENFORCEMENT OFFICER. Any peace officer or
72 tactical medic, except a constable, who is employed or



HB202 Engrossed

73 appointed pursuant to the Constitution or statutes of this
74 state, whether appointed or employed as a peace officer or
75 tactical medic by the state or a county or municipality
76 thereof, or by an agency or institution, corporate or
77 otherwise, created pursuant to the Constitution or laws of
78 this state and authorized by the Constitution or laws to
79 appoint or employ police officers or other peace officers or
80 tactical medics, and whose duties prescribed by law, or by the
81 lawful terms of their employment or appointment, include the
82 enforcement of, or the investigation and reporting of
83 violations of, the criminal laws of this state, or who is
84 empowered by the laws of this state to execute warrants, to
85 arrest and to take into custody persons who violate, or who
86 are lawfully charged by warrant, indictment, or other lawful
87 process, with violations of, the criminal laws of this state.
88 The term includes a detention facility officer. The term
89 includes a public safety dispatcher. The term includes any
90 individual designated a peace officer for purposes of immunity
91 under Section 6-5-338 as that section existed on February 5,
92 2025.

93 (5) RECKLESSLY WITHOUT LAW ENFORCEMENT JUSTIFICATION. A
94 law enforcement officer acts recklessly without law
95 enforcement justification if he or she is aware of, and
96 consciously disregards, a risk of death or substantial bodily



HB202 Engrossed

97 injury without reasonable law enforcement justification. A law
98 enforcement officer who creates a risk of death or substantial
99 bodily injury in the absence of reasonable law enforcement
100 justification but is unaware of that risk by reason of
101 voluntary intoxication, as defined in subdivision (e)(2) of
102 Section 13A-3-2, acts recklessly with respect thereto. Whether
103 a law enforcement officer acts recklessly without law
104 enforcement justification is a question of law to be decided
105 by the court, taking into account the wide range of a law
106 enforcement officer's duties. A law enforcement officer acts
107 without law enforcement justification when the law enforcement
108 officer harms the plaintiff by failing, in an objectively
109 unreasonable manner, to comply with written policies of the
110 law enforcement officer's employer or appointing authority or
111 when the law enforcement officer harms the plaintiff through
112 conduct premised on the law enforcement officer's objectively
113 unreasonable interpretation of such a policy.

114 (6) TACTICAL MEDIC. A firefighter paramedic or
115 firefighter emergency medical technician licensed by the State
116 of Alabama and employed by the state or a county or
117 municipality within the state, operating on-duty in direct
118 support of a tactical law enforcement unit to provide medical
119 services at high risk incidents, including hostage incidents,
120 narcotic raids, hazardous surveillance, sniper incidents,



HB202 Engrossed

121 armed suicidal persons, barricaded suspect, felony warrant
122 service, and fugitives refusing to surrender.

123 (7) WRITTEN POLICY. A written rule, regulation,
124 instruction, or directive issued by a law enforcement
125 officer's employer or appointing authority, and applicable to
126 conduct within a law enforcement officer's discretionary
127 authority, specifying the particular manner in which a law
128 enforcement officer should exercise discretion in specific
129 situations or scenarios. The written rule, regulation,
130 instruction, or directive must have been issued before the
131 occurrence of the relevant conduct, and must have been made
132 available to the law enforcement officer. Whether the law
133 enforcement officer actually read the written rule,
134 regulation, instruction, or directive is not determinative.

135 "§6-5-338.2

136 (a) Except as provided in subsection (b), a law
137 enforcement officer shall be immune from any claim that seeks
138 to impose civil liability on the law enforcement officer for
139 conduct performed within a law enforcement officer's
140 discretionary authority.

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

143 (1) The conduct constitutes a tort against the
144 plaintiff that is actionable under the laws of this State and



HB202 Engrossed

145 the law enforcement officer acted recklessly without law
146 enforcement justification.

147 (2) The conduct constitutes a tort against the
148 plaintiff that is actionable under the laws of this State and
149 the conduct violated a clearly established state statutory or
150 constitutional right of the plaintiff of which every
151 reasonable law enforcement officer would have known at the
152 time of the law enforcement officer's conduct.

153 (c) Notwithstanding the exceptions to immunity provided
154 in subsection (b), the immunity provided in Section 36-1-12(c)
155 remains available to a law enforcement officer subject to the
156 exceptions set forth in Section 36-1-12(d) and subject to the
157 provisions of this section, Section 6-5-338.3, and Section
158 6-5-338.4. A law enforcement officer is an officer, agent, or
159 employee of the state for purposes of Section 36-1-12.

160 (d) In any civil action against a law enforcement
161 officer in his or her personal or individual capacity premised
162 on conduct performed within the law enforcement officer's
163 discretionary authority, the complaint must identify with
164 particularity, for each defendant and for each claim, each of
165 the following:

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



HB202 Engrossed

168 (2) Specific factual allegations to satisfy each
169 element of each asserted claim.

170 (3) Specific factual allegations demonstrating that the
171 law enforcement officer lacks immunity pursuant to subsection
172 (a).

173 (e) In any civil action against a law enforcement
174 officer in his or her personal or individual capacity premised
175 on conduct performed within the law enforcement officer's
176 discretionary authority, the court shall promptly dismiss any
177 claim for which either of the following is true:

178 (1) The complaint lacks the legal and factual
179 particularity required under subsection (d), as long as the
180 law enforcement officer, or his or her employer or appointing
181 authority, has complied with any valid discovery request made
182 pursuant to subdivision (f) (2) and the Alabama Rules of Civil
183 Procedure and validly served no later than fourteen days after
184 the law enforcement officer first appears or otherwise defends
185 against the lawsuit.

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

188 (f) (1) Except as provided in subdivision (2), the
189 pendency of a motion to dismiss pursuant to subsection (e)
190 shall automatically stay the obligation of any party or



HB202 Engrossed

191 non-party to make disclosures or respond to discovery requests
192 of any kind unless a party establishes any of the following:

193 a. The motion to dismiss is frivolous.

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

196 c. An exception to the stay is necessary to prevent
197 undue prejudice to prevent a failure or delay of justice
198 within the meaning of Alabama Rule of Civil Procedure
199 27(a)(3).

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

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

213 (g) A law enforcement officer may seek entry of
214 dismissal or judgment as a matter of law, including summary



HB202 Engrossed

215 judgment, on grounds that he or she is immune pursuant to
216 subsection (a) as allowed under the Alabama Rules of Civil
217 Procedure.

218 (h) (1) A law enforcement officer asserting immunity
219 under subsection (a) bears the burden of establishing that the
220 claim is premised on conduct performed within the law
221 enforcement officer's discretionary authority as that term is
222 defined in Section 6-5-338.1(2).

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

229 "§6-5-338.3

230 (a) The improper denial of a motion to dismiss or
231 motion for judgment as a matter of law, including a motion for
232 summary judgment, based on the immunity provided under Section
233 6-5-338.2(a), or any action improperly allowing discovery in
234 violation of Section 6-5-338.2(f), shall entitle a law
235 enforcement officer to mandamus relief from the Alabama
236 Supreme Court. Any petition for a writ of mandamus pursuant to
237 this subsection shall be filed pursuant to the Alabama Rules
238 of Appellate Procedure.

239 (b) The filing of a petition for a writ of mandamus



HB202 Engrossed

240 shall automatically stay further proceedings in the trial
241 court unless, and to the extent that, the court validly finds
242 upon motion of any party that further proceedings are
243 necessary to prevent irreparable harm to the plaintiff.

244 "§6-5-338.4

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

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

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

262 (d) Every private, non-governmental person or entity
263 who hires a law enforcement officer during that officer's
264 off-duty hours to perform any type of security work or to work



HB202 Engrossed

265 while in the uniform of a law enforcement officer shall have
266 in force at least \$500,000 of liability insurance, which
267 insurance must indemnify for acts the off-duty law enforcement
268 officer takes within the line and scope of the private
269 employment or contract. The failure to have in force the
270 insurance required by this subsection shall make every
271 individual employer, every general partner of a partnership
272 employer, every member of an unincorporated association
273 employer, and every officer of a corporate employer
274 individually liable for all acts taken by the off-duty law
275 enforcement officer within the line and scope of the private
276 employment or contract."

277 Section 2. Sections 14-6-1 and 36-22-3, Code of Alabama
278 1975, are amended as follows:

279 "§14-6-1

280 The sheriff has the legal custody and charge of the
281 jail in his or her county and all prisoners committed thereto,
282 except in cases otherwise provided by law. The sheriff may
283 employ persons to carry out his or her duty to operate the
284 jail and supervise the inmates housed therein for whose acts
285 he or she is civilly responsible. Persons so employed by the
286 sheriff shall be acting for and under the direction and
287 supervision of the sheriff and shall be entitled to the same
288 immunities and legal protections granted to the sheriff under
289 the general laws and the Constitution of Alabama of ~~1901~~ 2022,
290 as long as such ~~persons are acting within the line and scope~~



HB202 Engrossed

291 ~~of their duties and are acting in compliance with the law~~
292 conduct is conduct performed within his or her discretionary
293 authority as defined in Section 1 of the Act adding this
294 amendment."

295 "§36-22-3

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

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

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

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

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

318 (5) To perform such other duties as are or may be



HB202 Engrossed

319 imposed by law.

320 (b) Any of the duties of the sheriff set out in
321 subsection (a) or as otherwise provided by law may be carried
322 out by deputies, reserve deputies, and persons employed as
323 authorized in Section 14-6-1 as determined appropriate by the
324 sheriff in accordance with state law. Persons undertaking such
325 duties for and under the direction and supervision of the
326 sheriff shall be entitled to the same immunities and legal
327 protections granted to the sheriff under the general laws and
328 the Constitution of Alabama of ~~1901~~ 2022, as long as ~~he or she~~
329 ~~is acting within the line and scope of his or her duties and~~
330 ~~is acting in compliance with the law~~ such conduct is conduct
331 performed within his or her discretionary authority as defined
332 in Section 6-5-338.1.

333 (c) Notwithstanding the provisions of Sections 14-6-1,
334 32-7-23, and this section, nothing in Section 14-6-1 and this
335 section shall serve as a bar to an individual's or entity's
336 recovery under the uninsured motorist coverage of the
337 individual or entity, or prevent an insured from being legally
338 entitled to recover damages under the uninsured motorist
339 coverage of the insured."

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

342 "§13A-3-20

343 The following definitions are applicable to this
344 article:

345 (1) BUILDING. Any structure which may be entered and
346 utilized by persons for business, public use, lodging, or the



HB202 Engrossed

347 storage of goods, and includes any vehicle, aircraft, or
348 watercraft used for the lodging of persons or carrying on
349 business therein. Each unit of a building consisting of two or
350 more units separately occupied or secured is a separate
351 building.

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

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

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



HB202 Engrossed

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

376 a. Someone charged with or convicted of an offense.

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

379 c. Someone held for extradition.

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

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

388 (46) FORCE. Physical action or threat against another,
389 including confinement.

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

392 (58) PREMISES. The term includes any building, as
393 defined in this section, and any real property.

394 (69) RESIDENCE. A dwelling in which a person resides
395 either temporarily or permanently or is visiting as an invited
396 guest.

397 ~~(710) VEHICLE. A motorized conveyance which is designed~~
398 ~~to transport people or property."~~

399 "§13A-3-27

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



HB202 Engrossed

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

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

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

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

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

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

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



HB202 Engrossed

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

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

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

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

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

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



HB202 Engrossed

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

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

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

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

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

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



HB202 Engrossed

484 facility.

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

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

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

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

491 ~~d. Otherwise confined pursuant to an order of a~~
492 ~~criminal court.~~

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

497 (2) A defendant shall be entitled to assert justification
498 and immunity under this section before a trial by filing a
499 written motion. Except for good cause shown, the defendant
500 shall file any motion made pursuant to this subdivision at the
501 same time as any motion the defendant makes pursuant to
502 Section 13A-3-23(d) (2).

503 (3) Prior to the commencement of a trial, and within 45
504 days after the defendant's motion is filed, the court having
505 jurisdiction over the case shall conduct a pretrial hearing to
506 determine whether force, including deadly force, used by the
507 defendant was justified or was unlawful under this section. To
508 the extent practicable, the court shall set the hearing on the
509 same calendar day as any pretrial hearing conducted pursuant



HB202 Engrossed

510 to Section 13A-3-23(d) (2). During any pretrial hearing to
511 determine immunity, the defendant must show by a preponderance
512 of the evidence that he or she is immune from criminal
513 prosecution.

514 (4) Prior to the commencement of a trial, and within 45
515 days after a pretrial hearing conducted under subdivision (3),
516 the court shall enter a written order setting forth reasons
517 why the defendant either possesses or lacks immunity from
518 criminal prosecution under this section. To the extent
519 practicable, the court shall issue the written order at the
520 same time as any order issued pursuant to Section
521 13A-3-23(d) (3). If the court concludes that the defendant has
522 proven by a preponderance of the evidence that the force he or
523 she used, including deadly force, was justified, the court
524 shall enter an order finding the defendant immune from
525 criminal prosecution under this section and dismissing the
526 criminal charges.

527 (5) If the defendant does not meet his or her burden of
528 proving immunity at the pretrial hearing, he or she may
529 continue to pursue justification and immunity under this
530 section as a defense at trial. Once the issue of justification
531 and immunity under this section has been raised by the
532 defendant, the state continues to bear the burden of proving



HB202 Engrossed

533 beyond a reasonable doubt all of the elements of the charged
534 conduct.

535 (g) (1) A court order improperly denying immunity under
536 this section, entered after the pretrial hearing provided
537 under subsection (f), shall entitle the defendant to mandamus
538 relief from the Alabama Supreme Court. Any petition for a writ
539 of mandamus pursuant to this subsection shall be filed
540 pursuant to the Alabama Rules of Appellate Procedure.

541 (2) The filing of a petition for a writ of mandamus
542 pursuant to subdivision (1) shall automatically stay further
543 proceedings in the trial court. The stay shall remain in
544 effect while the mandamus petition remains pending.

545 (h) A law enforcement agency may use standard
546 procedures for investigating the use of force described in
547 subsection (a), but the agency may not arrest the person for
548 using force unless it determines that there is probable cause
549 that the force used was unlawful under this section.

550 (i) No justification or immunity set forth in this
551 section shall affect the legal standards applicable to a
552 motion made in a criminal proceeding regarding the suppression
553 for use as evidence of anything obtained through an allegedly
554 unlawful search or seizure."

555 "§13A-3-28

556 A person may not use physical force to resist a lawful
557 arrest by a ~~peace officer~~ law enforcement officer who is known



HB202 Engrossed

558 or reasonably appears to be a ~~peace officer~~ law enforcement
559 officer."

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

562 Section 5. This act shall become effective on October
563 1, 2025.



HB202 Engrossed

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House of Representatives

Read for the first time and referred05-Feb-25
to the House of Representatives
committee on Judiciary

Read for the second time and placed27-Feb-25
on the calendar:
2 amendments

Read for the third time and passed06-Mar-25
as amended
Yeas 75
Nays 26
Abstains 3

John Treadwell
Clerk