

HB202 INTRODUCED



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2 N2RC8TJ-1
3 By Representative Reynolds
4 RFD: Judiciary
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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 or federal statutory or constitutional right of the plaintiff. This bill would also establish a heightened pleading standard and an

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26 automatic stay of proceedings to remain in effect while
27 the law enforcement officer seeks to establish that the
28 protection applies.

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

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A BILL

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TO BE ENTITLED

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AN ACT

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47 Relating to law enforcement officers; to establish
48 immunity for law enforcement officers from civil liability; to
49 establish immunity for law enforcement officers from criminal
50 prosecution; to provide exceptions to such immunities; to
51 provide procedures for asserting such immunities; to amend
52 Sections 13A-3-20, 13A-3-27, and 13A-3-28, Code of Alabama

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53 1975; to repeal Section 6-5-338, relating to peace officer
54 immunity.

55 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

56 Section 1. For purposes of this act, the following terms
57 have the following meanings unless the context dictates
58 otherwise:

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

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

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

74 c. The right is so obvious from the text of a federal
75 or state constitutional provision or statute that, before the
76 occurrence of the relevant conduct, no objectively reasonable

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77 law enforcement officer would have required case law to be put
78 on notice that the relevant conduct violated the right.

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

95 (3) DETENTION FACILITY OFFICER. Any peace officer,
96 guard, or detention or jail officer employed in a facility
97 used for the confinement, pursuant to law, of any of the
98 following persons:

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

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

102 c. Someone held for extradition.

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

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

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123 (5) RECKLESSLY WITHOUT LAW ENFORCEMENT JUSTIFICATION. A
124 law enforcement officer acts recklessly without law
125 enforcement justification if he or she is aware of, and
126 consciously disregards, a risk of death or substantial bodily
127 injury without reasonable law enforcement justification. A law
128 enforcement officer who creates a risk of death or substantial
129 bodily injury in the absence of reasonable law enforcement
130 justification but is unaware of that risk by reason of
131 voluntary intoxication, as defined in subdivision (e)(2) of
132 Section 13A-3-2, acts recklessly with respect thereto. Whether
133 a law enforcement officer acts without law enforcement
134 justification is a question of law to be decided by the court.
135 A law enforcement officer acts without law enforcement
136 justification when the law enforcement officer fails, in an
137 objectively unreasonable manner, to comply with written
138 policies of the law enforcement officer's employer or
139 appointing authority or when the law enforcement officer's
140 conduct is premised on the law enforcement officer's
141 objectively unreasonable interpretation of such a policy.

142 (6) TACTICAL MEDIC. A firefighter paramedic or
143 firefighter emergency medical technician licensed by the State
144 of Alabama and employed by the state or a county or
145 municipality within the state, operating on-duty in direct
146 support of a tactical law enforcement unit to provide medical

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147 services at high risk incidences including hostage incidents,
148 narcotic raids, hazardous surveillance, sniper incidents,
149 armed suicidal persons, barricaded suspect, felony warrant
150 service, and fugitives refusing to surrender.

151 (7) WRITTEN POLICY. A written rule, regulation,
152 instruction, or directive issued by a law enforcement
153 officer's employer or appointing authority, and applicable to
154 conduct within a law enforcement officer's discretionary
155 authority, specifying the particular manner in which a law
156 enforcement officer should exercise discretion in specific
157 situations or scenarios. The written rule, regulation,
158 instruction, or directive must have been issued before the
159 occurrence of the relevant conduct, and must have been made
160 available to the extent that every reasonable law enforcement
161 officer would have known of it.

162 Section 2. (a) Except as provided in subsection (b), a
163 law enforcement officer shall be immune from any claim that
164 seeks to impose civil liability on the law enforcement officer
165 for conduct performed within a law enforcement officer's
166 discretionary authority.

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

169 (1) The law enforcement officer acted recklessly
170 without law enforcement justification.

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171 (2) The conduct violated a clearly established state or
172 federal statutory or constitutional right of the plaintiff of
173 which every reasonable law enforcement officer would have
174 known at the time of the law enforcement officer's conduct.

175 (c) In any civil action against a law enforcement
176 officer in his or her personal or individual capacity premised
177 on conduct performed within the law enforcement officer's
178 discretionary authority, the complaint must identify with
179 particularity, for each defendant and for each claim, each of
180 the following:

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

183 (2) Specific factual allegations to satisfy each
184 element of each asserted claim.

185 (3) Specific factual allegations demonstrating that the
186 law enforcement officer lacks immunity pursuant to subsection
187 (a).

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

193 (1) The complaint lacks the legal and factual
194 particularity required under subsection (c), as long as the

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195 law enforcement officer, or his or her employer or appointing
196 authority, has complied with any valid discovery request made
197 pursuant to subdivision (e) (2) and the Alabama Rules of Civil
198 Procedure and validly served no later than fourteen days after
199 the law enforcement officer first appears or otherwise defends
200 against the lawsuit.

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

203 (e) (1) Except as provided in subdivision (2), the
204 pendency of a motion to dismiss pursuant to subsection (d)
205 shall automatically stay the obligation of any party or
206 non-party to make disclosures or respond to discovery requests
207 of any kind unless a party establishes any of the following:

208 a. The motion to dismiss is frivolous.

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

211 c. An exception to the stay is necessary to prevent
212 undue prejudice to prevent a failure or delay of justice
213 within the meaning of Alabama Rule of Civil Procedure
214 27(a) (3).

215 (2) The automatic stay of discovery provided by
216 subdivision (1) does not prohibit the plaintiff from seeking
217 production of any written policies governing the law
218 enforcement officer's conduct at the time of the specific

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219 events identified in the complaint. Nothing in this act shall
220 be construed as addressing whether a written policy is a
221 public record for purposes of Section 36-12-40 et seq., and
222 nothing in this act shall preclude the entry of a protective
223 order prohibiting public disclosure of such a written policy.

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

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

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

238 (2) Once the law enforcement officer satisfies his or
239 her burden under subdivision (1), the burden shifts to the
240 plaintiff to establish that the law enforcement officer is not
241 immune pursuant to subsection (b).

242 Section 3. (a) The improper denial of a motion to
243 dismiss or motion for judgment as a matter of law, including a

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244 motion for summary judgment, based on the immunity provided
245 under Section 2(a), or any action improperly allowing
246 discovery in violation of Section 2(e), shall entitle a law
247 enforcement officer to mandamus relief from the Alabama
248 Supreme Court. Any petition for a writ of mandamus pursuant to
249 this subsection shall be filed pursuant to the Alabama Rules
250 of Appellate Procedure.

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

256 Section 4. (a) The protections afforded a law
257 enforcement officer under this act apply to any cause of
258 action that accrued on or after the effective date of this
259 act.

260 (b) The protections available to law enforcement
261 officers under this act are in addition to, and supplemental
262 of, any protections available to a law enforcement officer
263 pursuant to Section 36-1-12, Section 36-22-3, Section 14-16-1,
264 or Article I, Section 14 of the Alabama Constitution of 2022.

265 (c) This act is intended to extend immunity only to a
266 law enforcement officer for conduct performed within a law
267 enforcement officer's discretionary authority. No immunity is
268 extended to any private non-governmental person or entity,

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269 including any private employer of a law enforcement officer
270 during that officer's off-duty hours.

271 (d) Every private, non-governmental person or entity
272 who hires a law enforcement officer during that officer's
273 off-duty hours to perform any type of security work or to work
274 while in the uniform of a law enforcement officer shall have
275 in force at least \$500,000 of liability insurance, which
276 insurance must indemnify for acts the off-duty law enforcement
277 officer takes within the line and scope of the private
278 employment or contract. The failure to have in force the
279 insurance required by this subsection shall make every
280 individual employer, every general partner of a partnership
281 employer, every member of an unincorporated association
282 employer, and every officer of a corporate employer
283 individually liable for all acts taken by the off-duty law
284 enforcement officer within the line and scope of the private
285 employment or contract.

286 Section 5. Sections 13A-3-20, 13A-3-27, and 13A-3-28
287 Code of Alabama 1975, are amended as follows:

288 "§13A-3-20

289 The following definitions are applicable to this
290 article:

291 (1) BUILDING. Any structure which may be entered and
292 utilized by persons for business, public use, lodging, or the
293 storage of goods, and includes any vehicle, aircraft, or
294 watercraft used for the lodging of persons or carrying on

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295 business therein. Each unit of a building consisting of two or
296 more units separately occupied or secured is a separate
297 building.

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

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

317 (4) DETENTION FACILITY OFFICER. Any peace officer,
318 guard, or detention or jail officer who, in the exercise of
319 his or her discretionary authority, is authorized to use
320 physical force against persons and who is employed in a

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321 facility used for the confinement, pursuant to law, of any of
322 the following persons:

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

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

326 c. Someone held for extradition.

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

329 (~~3~~5) DWELLING. A building which is usually occupied by
330 a person lodging therein at night, or a building of any kind,
331 including any attached balcony, whether the building is
332 temporary or permanent, mobile or immobile, which has a roof
333 over it, and is designed to be occupied by people lodging
334 therein at night.

335 (~~4~~6) FORCE. Physical action or threat against another,
336 including confinement.

337 (7) LAW ENFORCEMENT OFFICER. Any peace officer or
338 tactical medic, except a constable, who is employed or
339 appointed pursuant to the Constitution or statutes of this
340 state, whether appointed or employed as a peace officer or
341 tactical medic by the state or a county or municipality
342 thereof, or by an agency or institution, corporate or
343 otherwise, created pursuant to the Constitution or laws of
344 this state and authorized by the Constitution or laws to
345 appoint or employ police officers or other peace officers or
346 tactical medics, and whose duties prescribed by law, or by the
347 lawful terms of their employment or appointment, include the

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348 enforcement of, or the investigation and reporting of
 349 violations of, the criminal laws of this state, and who is
 350 empowered by the laws of this state to execute warrants, to
 351 arrest and to take into custody persons who violate, or who
 352 are lawfully charged by warrant, indictment, or other lawful
 353 process, with violations of, the criminal laws of this state.
 354 The term includes any detention facility officer.

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

357 (69) RESIDENCE. A dwelling in which a person resides
 358 either temporarily or permanently or is visiting as an invited
 359 guest.

360 (10) TACTICAL MEDIC. A firefighter paramedic or
 361 firefighter emergency medical technician licensed by the State
 362 of Alabama and employed by the state or a county or
 363 municipality within the state, operating on-duty in direct
 364 support of a tactical law enforcement unit to provide medical
 365 services at high risk incidences including hostage incidents,
 366 narcotic raids, hazardous surveillance, sniper incidents,
 367 armed suicidal persons, barricaded suspect, felony warrant
 368 service, and fugitives refusing to surrender.

369 (711) VEHICLE. A motorized conveyance which is designed
 370 to transport people or property."

371 "§13A-3-27

372 ~~(a) A peace officer is justified in using that degree~~
 373 ~~of physical force which he reasonably believes to be~~
 374 ~~necessary, upon a person in order:~~

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

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

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

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

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

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

401 ~~(d) A peace officer who is effecting an arrest pursuant~~
402 ~~to a warrant is justified in using the physical force~~

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403 ~~prescribed in subsections (a) and (b) unless the warrant is~~
404 ~~invalid and is known by the officer to be invalid.~~

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

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

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

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

426 (1) He reasonably believes that force to be necessary
427 to defend himself or a third person from what he reasonably
428 believes to be the use or imminent use of deadly physical
429 force; or

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

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

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

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

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

457 ~~(3) "Detention facility" means any place used for the~~

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458 ~~confinement, pursuant to law, of a person:~~

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

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

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

463 ~~d. Otherwise confined pursuant to an order of a~~
464 ~~criminal court.~~

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

469 (2) Prior to the commencement of a trial in a case in
470 which a defense is claimed under this section, the court
471 having jurisdiction over the case, upon motion of the
472 defendant, shall conduct a pretrial hearing to determine
473 whether force, including deadly force, used by the defendant
474 was justified or was unlawful under this section. During any
475 pretrial hearing to determine immunity, the defendant must
476 show by a preponderance of the evidence that he or she is
477 immune from criminal prosecution.

478 (3) After a pretrial hearing under subdivision (2), the
479 case shall not proceed to trial until the court enters a
480 written order setting forth reasons that the defendant lacks
481 immunity from criminal prosecution under this section. If the
482 court concludes that the defendant has proven by a

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483 preponderance of the evidence that force, including deadly
484 force, was justified, the court shall enter an order finding
485 the defendant immune from criminal prosecution under this
486 section and dismissing the criminal charges.

487 (4) If the defendant does not meet his or her burden of
488 proving immunity at the pretrial hearing, he or she may
489 continue to pursue justification and immunity under this
490 section as a defense at trial. Once the issue of justification
491 and immunity under this section has been raised by the
492 defendant, the state continues to bear the burden of proving
493 beyond a reasonable doubt all of the elements of the charged
494 conduct.

495 (g) (1) A court order improperly denying immunity under
496 this section, entered after the pretrial hearing provided
497 under subsection (f), shall entitle the defendant to mandamus
498 relief from the Alabama Supreme Court. Any petition for a writ
499 of mandamus pursuant to this subsection shall be filed
500 pursuant to the Alabama Rules of Appellate Procedure.

501 (2) The filing of a petition for a writ of mandamus
502 pursuant to subdivision (1) shall automatically stay further
503 proceedings in the trial court. The stay shall remain in
504 effect while the mandamus petition remains pending.

505 (h) A law enforcement agency may use standard
506 procedures for investigating the use of force described in
507 subsection (a), but the agency may not arrest the person for

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508 using force unless it determines that there is probable cause
509 that the force used was unlawful under this section."

510 "§13A-3-28

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

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

517 Section 7. This act shall become effective on October
518 1, 2025.