

HOUSE BILL 2777

By Todd

AN ACT to amend Tennessee Code Annotated, Title 39,
relative to use of force.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act is known and may be cited as the "Judge Mike Carter Defense Protection Act."

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 11, Part 6, is amended by adding the following new section:

39-11-617.

(a) A person who uses force as permitted by §§ 39-11-611 – 39-11-616, § 39-11-620, § 39-11-621, § 39-17-1322, or under any other applicable common law or statutory provisions addressing the justifiable use of force, is immune from criminal prosecution for the use of such force, unless:

(1) The person against whom force was used is a law enforcement officer acting in the scope of the officer's official duties and the person using force knew or reasonably should have known that the person was a law enforcement officer; or

(2) The force used by the person resulted in the death or injury of an innocent bystander or other person against whom the force was not justified, in which case the immunity does not apply to a criminal prosecution related to the death or injury of the innocent bystander or other person against whom force was not justified.

(b) As used in this section, "defendant" means a person who uses or threatens to use force against another and asserts that the force used or threatened was justified,

and includes any other person charged with, acting in concert with, or having criminal responsibility for a person who uses or threatens to use force.

(c) A defendant may raise a justified use of force claim by submitting a written statement in a letter from the defendant or a person acting on behalf of the defendant. The letter must be addressed to one (1) or more of the investigating law enforcement officers, the district attorney for the jurisdiction, or the clerk for a court in which charges have been filed. The defendant is not required to include any declaration or statement other than a statement that the defendant asserts that the use of force was justified.

(d) When a defendant raises a justification for the use of force or evidence of justification or self-defense is brought to the attention of or observed by law enforcement:

- (1) The appropriate law enforcement agency shall conduct a full investigation of the potential defense of justification;
- (2) All evidence of the investigation must be preserved;
- (3) At the conclusion of the investigation, the investigating officer shall generate a discoverable report of evidence relevant to the justification claim; and
- (4) The law enforcement agency shall not charge or arrest the person for an offense based on the use of force unless the law enforcement agency has determined that there is probable cause to believe that the force used was unlawful and there is not probable cause to believe that the use of force was justified. If a law enforcement officer seeks to charge or arrest the person for an offense based on the use of force, then the officer must include as an affirmative element of the charging affidavit that the officer has complied with the requirements of this subsection (d) and that based on the officer's investigation

there is not probable cause to believe that the defendant's use of force was justified.

(e) A prosecutor shall not commence a criminal prosecution for a criminal offense based on an alleged unlawful use of force, including a charge of being an accessory, before determining whether there is probable cause to believe that the use of force was unlawful and whether there is probable cause to believe that, based on a consideration of all the facts and available testimony, the state can prevail in negating any defense of justification at trial.

(f)

(1) If a law enforcement agency obtains an arrest warrant prior to consulting with the district attorney general, the district attorney general shall make the evaluations required by subsection (e) before proceeding with the prosecution.

(2) If a law enforcement agency consults with the district attorney general before seeking an arrest warrant, the district attorney general shall make the evaluations required by subsection (e) before the affidavit of complaint is submitted and the affidavit of complaint shall comply with subdivision (d)(4).

(3) In any instance in which a grand jury indictment is sought on a matter involving the alleged unlawful use of force, including a charge of being an accessory, the entity or individual presenting the matter to the grand jury shall:

(A) Make the evaluations required by subsection (e) before presenting the matter to the grand jury;

(B) Advise the grand jury that a claim of justification has been or may be raised; and

(C) Present to the grand jury for its consideration any evidence or testimony that is at that time available to the entity or individual on the issue of justification.

(g)

(1) Prior to the commencement of a trial, the defendant may make a motion for a justified use of force hearing. Upon the defendant's motion, the trial court shall conduct a hearing to determine whether the force used by the defendant was justified under applicable law. The defendant must file a motion under this subdivision (g)(1) no less than ninety (90) days prior to trial.

(2) If the defendant moves for a justified use of force hearing or upon the court's own motion, the court shall expedite the hearing and issue a decision within forty (40) days of the motion. Either party may request additional time beyond the forty-day period to prepare, in which case the court shall order that the hearing shall be reset on the first docket following the time period granted for the continuance. The defendant is entitled to at least one (1) hearing after being charged and at least one (1) hearing following the conclusion of discovery.

(3) The sole issue at the justified use of force hearing is whether the defendant used force or threatened the use of force in a manner that is justified by applicable law and is immune from criminal prosecution under this section.

(4) The defendant may testify at the hearing. If the defendant chooses not to testify, then the defendant's silence shall not be used against the defendant in resolving the hearing. If the defendant chooses to testify, the defendant's testimony shall not be used for any reason other than the consideration of the hearing or for impeachment at trial should the defendant testify at trial.

(5) Once the defendant establishes a prima facie case that the use of force or threatened use of force was justified under applicable law, the burden of proof shifts to the state to demonstrate by clear and convincing evidence that the use of force or threatened use of force was not justified.

(6) If, after a justified use of force hearing, the court concludes that the defendant has raised a prima facie case that the defendant's use of force was justified and that the prosecutor has failed to prove by clear and convincing evidence that the force was not justified, the court shall enter an order finding the defendant immune from criminal prosecution and dismissing the criminal charges.

(7) If the court does not rule in favor of the defendant following a justified use of force hearing, the defendant is not precluded from asserting at any other point in the case that the use of force was justified. Once the issue of justification has been raised by the defendant, the state bears the burden of proof at trial to prove beyond a reasonable doubt all of the elements of the charged conduct and to negate the claim that the use of force was justified.

(8) The prosecution shall not present evidence at trial that was not presented in a use of force hearing if such hearings were held.

(h) If the court dismisses the criminal prosecution pursuant to subdivision (g), then the court shall award the defendant attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in the defense of the criminal prosecution.

SECTION 3. Tennessee Code Annotated, Section 39-11-620, is amended by adding the following new subsection:

(c) A law enforcement officer who uses or threatens to use force pursuant to this section may raise any defense of justification, pursuant to § 39-11-617.

SECTION 4. Tennessee Code Annotated, Section 39-17-1322(a), is amended by deleting the subsection and substituting instead:

(a) A person shall not be charged with or convicted of a violation under this part if the person possessed, displayed, or employed a weapon in justifiable self-defense or in justifiable defense of another. A person who has been charged with a violation under this part is entitled to any available relief under § 39-11-617.

SECTION 5. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 6. This act takes effect upon becoming a law, the public welfare requiring it.