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## CRIMES AND OFFENSES Defenses to Criminal Prosecution: Change Provisions Relating to the Use of Force in the Defense of Habitations or Residences; Provide for Related Matters

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## CRIMES AND OFFENSES

### *Defenses to Criminal Prosecution: Change Provisions Relating to the Use of Force in the Defense of Habitations or Residences; Provide for Related Matters*

CODE SECTIONS:	O.C.G.A. §§ 16-3-21, -23 (amended)
BILL NUMBER:	SB 160
ACT NUMBER:	385
GEORGIA LAWS:	2001 Ga. Laws 1247
SUMMARY:	The Act changes the Georgia Code in regard to the justification a person must have in defending his or her home with force that is likely to cause death or great bodily harm. The Act adds to the Georgia Code that a person is justified in use of such force when it is asserted against a person who is not a member of the defender's family or household, that person unlawfully and forcibly enters or has entered the residence, and the defender knew or had reason to believe that an unlawful and forcible entry occurred.
EFFECTIVE DATE:	July 1, 2001

#### *History*

The "Make My Day Bill," as SB 160 has been called, allows homeowners to use deadly force in protecting their home from an illegal intruder.<sup>1</sup> Essentially, homeowners can shoot first and ask questions later.<sup>2</sup> A rash of home invasions in Macon, Georgia, contributed to efforts by legislators to make it easier for people to defend their home with deadly force.<sup>3</sup> Before this bill, to be justified in using deadly force, home defenders had to reasonably believe (1) that an intruder made a

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1. See Sylvia Cooper, *Senate OKs Deadly Force Bill Measure Offers Protections to Homeowners*, AUGUSTA CHRON., Mar. 9, 2001, at C1.

2. See Audio Recording of Senate Proceedings, Mar. 7, 2001 (remarks by Sen. Eric Johnson), at [http://www.state.ga.us/services/leg/audio/2001\\_archive.html](http://www.state.ga.us/services/leg/audio/2001_archive.html).

3. See Telephone Interview with Rep. Curtis Jenkins, House District No. 110 (Apr. 4, 2001) [hereinafter Jenkins Interview].

violent and tumultuous entry for the purpose of assaulting or inflicting forcible violence upon any person in the dwelling or (2) that such entry was made in pursuit of a felony.<sup>4</sup> SB 160 was proposed to add a third justification defense that would allow people to defend their home without having to stop and think whether deadly force toward an intruder would meet the prior two reasonableness requirements. Such force would be justified so long as it was not used against a member of the family or household.<sup>5</sup> Due to the speed at which home invasion events transpire, legislators wanted to make it easier for people to defend their homes with deadly force.<sup>6</sup> Representative Curtis Jenkins said, “[p]assing legislation is always a balancing act and these home invasions have become so violent and frequent that the homeowner has been placed at a greater risk in recent years and we needed to give them more protection.”<sup>7</sup>

According to Senator Eric Johnson, who introduced the bill in the Senate, it is unlikely under current law that people using deadly force to protect their home and inhabitants would be prosecuted for a crime, but legislators proposed the bill’s amendments to clarify situations justifying deadly force.<sup>8</sup>

While writing this bill, legislators added language stating that the defense of self or habitation could not be used by a homeowner in circumstances where deadly force was applied to members of the family or household.<sup>9</sup> This inclusion was suggested by legislative counsel so that such a defense would not be available, for example, when an estranged husband enters the home and is shot by his spouse.<sup>10</sup> Senator Johnson said, “we [did not] want this defense to be used by defense attorneys for situations where [one] family member shoots another. This was not [the bill’s purpose; it is] to allow homeowners to protect

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4. See 1968 Ga. Laws 1249, § 1, at 1273 (formerly found at O.C.G.A. § 16-3-23 (1999)); Jenkins Interview, *supra* note 3.

5. See Jenkins Interview, *supra* note 3; see also SB 160, as introduced, 2001 Ga. Gen. Assem.

6. See Jenkins Interview, *supra* note 3.

7. *Id.*

8. Telephone Interview with Sen. Eric Johnson, Senate District No. 1 (Apr. 3, 2001) [hereinafter Johnson Interview].

9. See SB 160, as passed, 2001 Gen. Assem.; see also Johnson Interview, *supra* note 8.

10. See Johnson Interview, *supra* note 8.

themselves and their property when they know or reasonably know that someone has trespassed into their home.”<sup>11</sup>

Another focus of the bill was to address potential civil liability under current law.<sup>12</sup> Although the bill would not prevent a civil suit, legislators believed that adding this defense to the criminal code would aid homeowners in defense of civil suits because the bill supports homeowners in applying force, which can help homeowners “in the eyes of the jury.”<sup>13</sup>

A similar bill was introduced during the 1995 legislative session by then Representative Bart Ladd.<sup>14</sup> The bill passed in the House but failed in the Senate because then Senate Special Judiciary Chairman Mike Egan disapproved of the bill.<sup>15</sup>

### *SB 160*

Senators Eric Johnson of the 1st District, Rooney Bowen of the 13th District, Nathan Dean of the 31st District, Hugh Gillis of the 20th District, and George Hooks of the 14th District sponsored SB 160.<sup>16</sup> The bill, after being favorably reported by the Judiciary Committee, was passed as introduced.<sup>17</sup> The House also referred SB 160 to its Judiciary Committee which reported the bill without change. The bill proceeded to the House floor on March 19, 2001, and was handled by Representative Burke Day.<sup>18</sup> When the bill was presented to the House for approval, Representative Tom Bordeaux asked what the definition of “family” included and whether it extended to first and second cousins or just to immediate family.<sup>19</sup> Representative Day responded that he was not sure as to the legal meaning of family but assumed that it meant

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11. *Id.*

12. *Id.*

13. Jenkins Interview, *supra* note 3.

14. See HB 107, as introduced, 1995 Ga. Gen. Assem.; Johnson Interview, *supra* note 8; see also Cooper, *supra* note 1, at C1.

15. See Johnson Interview, *supra* note 8.

16. See SB 160, as introduced, 2001 Ga. Gen. Assem.

17. Compare SB 160, as introduced, 2001 Ga. Gen. Assem., with SB 160, as passed, 2001 Ga. Gen. Assem.

18. See State of Georgia Final Composite Status Sheet, SB 160, Mar. 21, 2001; Audio Recording of House Proceedings, Mar. 19, 2001 (remarks by Rep. Burke Day), at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter House Audio]; see also Jenkins Interview, *supra* note 3.

19. See House Audio, *supra* note 18 (remarks by Rep. Tom Bordeaux).

immediate family “and you would know who they are.”<sup>20</sup> The House accepted Representative Day’s response and unanimously passed the bill.<sup>21</sup> Governor Roy Barnes signed the bill into law on April 28, 2001.<sup>22</sup>

### *The Act*

The Act amends Code section 16-3-21 by adding language to subsection (a).<sup>23</sup> Under the Act, subsection (a), relating to the justification of force in the defense of self or others, clarifies that this defense is available to both men and women by adding female gender pronouns where appropriate.<sup>24</sup> The Act also adds to Code section 16-3-21 language that refers to Code section 16-3-23 for an exception to justifiable use of deadly force.<sup>25</sup> Code section 16-3-21 requires that a person is justified in using deadly force only if that person reasonably believes such force is necessary to prevent their own death or great bodily injury; the Act also makes an exception through Code section 16-3-23 to include prevention of death or great bodily injury to a third person or to prevent a forcible felony.<sup>26</sup>

Section 2 of the Act amends Code section 16-3-23 by adding female gender pronouns where appropriate, by inserting a new subsection (2), and by re-labeling the previous subsection (2) as subsection (3).<sup>27</sup> The new subsection (2) allows for a person to use deadly force against a

20. *Id.* (remarks by Rep. Burke Day).

21. See Georgia House of Representatives Voting Record, SB 160 (Mar. 19, 2001); House Audio, *supra* note 18 (remarks by Rep. Burke Day and vote on bill). In an interview after bill passage, Curtis Jenkins, Chairman of the House Special Judiciary Committee, elaborated on the meaning of “family.” See Jenkins Interview, *supra* note 3. According to Representative Jenkins, the definition of family is not in the bill and any statutory meaning attached to family would be found in O.C.G.A. § 16-3-23. See *id.* Representative Jenkins added that if the definition of family is not found in the criminal code, then the definition would be left to judicial interpretation unless the General Assembly decides to readdress the issue in a later session. See *id.* If left to judicial interpretation, Representative Jenkins suggested that courts look to other sections of the Code that deal with family issues. See *id.* He indicated that courts may also consider the phrase “to any person dwelling or being therein” used in O.C.G.A. § 16-3-23(1) as an indication that family means anyone who actually lives there. See *id.*; O.C.G.A. § 16-3-23 (1999).

22. See 2001 Ga. Laws 1247, § 3, at 1249.

23. Compare 1968 Ga. Laws 1249, § 1, at 1272-73 (formerly found at O.C.G.A. § 16-3-21 (1999)), with O.C.G.A. § 16-3-21 (Supp. 2001).

24. Compare 1968 Ga. Laws 1249, § 1, at 1272-73 (formerly found at O.C.G.A. § 16-3-21 (1999)), with O.C.G.A. § 16-3-21 (Supp. 2001).

25. Compare 1968 Ga. Laws 1249, § 1, at 1272-73 (formerly found at O.C.G.A. § 16-3-21 (1999)), with O.C.G.A. § 16-3-21 (Supp. 2001).

26. Compare 1968 Ga. Laws 1249, § 1, at 1272-73 (formerly found at O.C.G.A. § 16-3-21 (1999)), with O.C.G.A. § 16-3-21 (Supp. 2001).

27. Compare 1968 Ga. Laws 1249, § 1, at 1273 (formerly found at O.C.G.A. § 16-3-23 (1999)), with O.C.G.A. § 16-3-23 (Supp. 2001).

trespasser in protecting his or her home provided that the trespasser is not a member of the family or household in which the defender resides, and that the defender knew or had reason to believe that the intruder entered unlawfully and with force.<sup>28</sup>

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28. *Compare* 1968 Ga. Laws 1249, § 1, at 1273 (formerly found at O.C.G.A. § 16-3-23 (1999)), with O.C.G.A. § 16-3-23 (Supp. 2001).