

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 252
Judiciary

(Delegate Cluster, *et al.*)

Protection of Persons and Property - Criminal Immunity

This bill sets forth statutory provisions regarding the use of force in defense of persons or property.

Fiscal Summary

State Effect: Potential minimal decrease in State expenditures for the Department of Public Safety and Correctional Services as a result of a decrease in the number of persons arrested and incarcerated for the types of cases affected by this bill.

Local Effect: Potential minimal decrease in circuit court expenditures due to fewer criminal prosecutions in the types of cases affected by this bill.

Small Business Effect: None.

Analysis

Bill Summary: The bill creates a statutory justification for a person who uses force, except for deadly force, against an individual if the person reasonably believes that the use of force is necessary to (1) defend the person or another against imminent use of unlawful force by the individual or (2) prevent or terminate the trespass by the individual onto real property in which the person or a member of the person's immediate family has a possessory interest or that the person has a legal duty to protect.

The bill also creates a statutory justification for use of deadly force if the person reasonably believes that the use of deadly force is necessary to prevent (1) imminent death or serious bodily harm to the person or another or (2) imminent commission of a forcible felony.

The bill provides that a person who is not engaged in unlawful activity and is in a place where the person has a right to be has no duty to retreat when attacked or threatened with the use of force.

A person who unlawfully and forcibly enters or attempts to enter a person's dwelling or occupied vehicle is statutorily presumed to be doing so with the intent to commit a forcible felony.

The bill also creates a statutory presumption that a person reasonably believed that the use of deadly force was necessary in self-defense if the attacker against whom the deadly force was used had or was in the process of (1) unlawfully and forcibly entering a dwelling or occupied vehicle or (2) removing a third person from a dwelling or occupied vehicle against the third person's will. This presumption does not apply if the person subject to the deadly force (1) had a right to be in the dwelling or vehicle or (2) had lawful custody or guardianship of the third person being removed from the dwelling or vehicle. The presumption also does not apply if the person using deadly force (1) was engaged in unlawful activity or (2) knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer acting in an official capacity.

Persons justified in using force under the bill are immune from criminal prosecution. This immunity does not apply if the person knew or reasonably should have known that the person subject to the force was a law enforcement officer acting in an official capacity.

Current Law/Background: Self-defense is a common law doctrine that has been addressed by Maryland courts on numerous occasions. To succeed on a claim of self-defense, the accused must have (1) not been the aggressor or provoked the conflict; (2) had reasonable grounds to believe that he/she was in apparent imminent or immediate danger of losing his/her own life or incurring serious bodily harm from his/her assailant or potential assailant; (3) actually believed at the time that he/she faced this type of danger; and (4) not used more force than the situation demanded. See *Marquardt v. State*, 164 Md. App. 95, 140 (2005). See also *Sydnor v. State*, 365 Md. 205, 216, A.2d 669, 675 (2001).

Included in the doctrine of self-defense is a duty to retreat, that is, a duty by the individual claiming self-defense to retreat and escape the danger if it was in his/her power to do so and was consistent with maintaining his/her safety. See *Sydnor*, 365 Md. at 216, 776 A.2d at 675. Use of deadly force traditionally has not been permissible in defense of property alone. Traditionally, under the common law, the right to the use of deadly force in self-defense did not apply until the claimant "retreated to the wall."

Some states, like Maryland, have adopted an exception to the duty to retreat known as the "castle doctrine." Under the castle doctrine, "a man faced with the danger of an attack upon his/her dwelling need not retreat from his/her home to escape the danger, but instead

may stand their ground and, if necessary to repel the attack, may kill the attacker.” *Burch v. State*, 346 Md. 253, 283-4, 696 A.2d 443, 458 (1997) quoting *Crawford v. State*, 231 Md. 354, 361, 190 A.2d 538, 541 (1963). Nationally, courts are divided as to whether a duty to retreat exists under the castle doctrine in situations involving cohabitants, guests, and invitees.

Other states, however, have expanded on the castle doctrine by extending the exception to the duty to retreat to locations outside of a person’s dwelling. These laws, commonly referred to as “stand your ground” laws, vary by jurisdiction; however, in general, they establish that a person does not have a duty to retreat from an attacker in any place where the person has a right to be. According to the National Conference of State Legislatures, as of August 30, 2013, at least 22 states have enacted such laws (Alabama, Arizona, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia). In nine of these states, the statute includes “stand your ground” language.

With respect to civil liability, Chapter 555 of 2010 specifies that a person is not liable for damages for a personal injury or the death of an individual who enters the person’s dwelling or place of business if (1) the person reasonably believes that force or deadly force is necessary to repel an attack by the individual and (2) the amount and nature of the force used by the person is reasonable under the circumstances. Immunity does not attach, however, if the person is convicted of a crime of violence, second-degree assault, or reckless endangerment as a result of the incident. Chapter 555 does not limit or abrogate any immunity from civil liability or defense under any other provision of the Maryland Code or at common law.

Additional Information

Prior Introductions: HB 589 of 2006, a similar bill, received an unfavorable report from the House Judiciary Committee. Its cross file, SB 870, received a hearing in the Senate Judicial Proceedings Committee, but no further was taken on the bill.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, State’s Attorneys’ Association, Department of Public Safety and Correctional Services, Department of State Police, CNN.com, National Public Radio, National Conference of State Legislatures, Department of Legislative Services

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