

Department of Legislative Services  
Maryland General Assembly  
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 688

(Senator Dyson, *et al.*)

Judicial Proceedings

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Homicide - Use of Deadly Force in a Residence - Defense

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This bill creates a statutory presumption that a person held a reasonable fear of imminent peril of death or serious physical injury to the person or a member of the person's family or household if: (1) the person used deadly force or force likely to cause death in the person's residence; and (2) the individual against whom the force was used entered or had entered the person's residence unlawfully and forcibly. The presumption only applies to civil liability.

The bill applies prospectively to any event or circumstances occurring on or after the bill's October 1, 2006 effective date.

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Fiscal Summary

**State Effect:** Potential operational efficiencies to the District Court to the extent the bill results in fewer civil cases.

**Local Effect:** Potential operational efficiencies to the circuit courts to the extent the bill results in fewer civil cases.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The bill provides that a person who falls under this statutory presumption is not civilly liable for any act or omission arising from the use of deadly

force or force likely to cause death in protecting or attempting to protect the person or a member of the person's family or household.

**Current Law:** Self-defense is a common law doctrine that has been addressed by Maryland courts on numerous occasions. In order to succeed on a claim of self-defense, the individual invoking self-defense must have (1) not been the aggressor or provoked the conflict; (2) had reasonable grounds to believe that he was in apparent imminent or immediate danger of losing his own life or incurring serious bodily harm from his assailant or potential assailant; (3) actually believed at the time that he 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 power to do so and was consistent with maintaining his safety. *See Sydnor*, 365 Md. at 216, 776 A.2d at 675.

Maryland has 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 dwelling need not retreat from his home to escape the danger, but instead may stand his ground and, if necessary to repel the attack, may kill the attacker." *See 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). Courts are split as to whether a duty to retreat exists under the castle doctrine in situations involving cohabitants, guests, and invitees.

**Background:** California and Massachusetts have both enacted similar laws providing civil immunity for individuals who use deadly force in a residence.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** State's Attorneys' Association, Department of Juvenile Services, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - March 7, 2006  
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