

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 449 (Senators Pipkin and Brinkley)
Judicial Proceedings

Crimes - Self-Defense - No Duty to Retreat or Seek Safety by Escape

This bill provides that a person charged with assault in the first or second degree, reckless endangerment, or other related crimes may assert a claim of self-defense even though the person failed to retreat or seek safety by escape.

Fiscal Summary

State Effect: None. The change would not directly affect State finances.

Local Effect: None. The change would not directly affect local finances.

Small Business Effect: None.

Analysis

Current Law: Assault in the first degree is intentionally causing or attempting to cause physical injury to another or committing an assault with a firearm. Assault in the first degree is a felony, punishable by up to 25 years imprisonment.

Felony assault in the second degree is the intentional causing of physical injury to another if the defendant knew or had reason to know that the victim was a law enforcement officer engaged in the performance of the officer's official duties. Felony assault in the second degree is punishable by up to 10 years incarceration and/or a \$5,000 fine. Misdemeanor assault in the second degree encompasses all other assaults. It is punishable by up to 10 years incarceration and/or a \$2,500 fine.

Reckless endangerment is recklessly engaging in conduct that creates a substantial risk of death or serious physical injury to another or discharging a firearm from a motor vehicle in a manner that creates a substantial risk of death or serious physical injury to another. Reckless endangerment is punishable by up to five years imprisonment and/or a \$5,000 fine.

Under § 3-205 of the Criminal Law Article, an inmate may not cause or attempt to cause an employee of a correctional facility or sheriff's office to come into contact with specified bodily fluids. An inmate convicted of this misdemeanor offense faces a consecutive sentence of up to 10 years incarceration and/or a \$2,500 fine.

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 accused must have • not been the aggressor or provoked the conflict; • 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; • actually believed at the time that he/she faced this type of danger; and • 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 have adopted the "true man" doctrine as an alternative to the common law doctrine of self-defense. The true man doctrine applies when the individual claiming self-defense was in a place where he/she had a right to be and faced a reasonably apparent danger of death or serious bodily harm. Under this doctrine, an individual has the right to stand his/her ground against an attacker and is under no obligation to retreat and can use force, and if reasonable, deadly force against his/her attacker. This doctrine provides that an individual faced with a felonious attack is under no obligation to retreat, even if it is safe to do so. Nor is the individual required to deliberate whether a retreat is reasonable under the circumstances. However, the true man doctrine does not authorize certain behavior, including • the use of unreasonable force; or • initiation of a confrontation or attack.

Other 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 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.

Additional Information

Prior Introductions: SB 761 of 2007 and SB 910 of 2006, identical bills, were heard in the Senate Judicial Proceedings Committee but no further action was taken.

Cross File: None.

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

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mll/jr

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