

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 999
Judiciary

(Delegate Conaway, *et al.*)

Criminal Law - Self-Defense - Immunity for Use of Physical Force in Defense of Dwelling

This bill establishes that an occupant of a dwelling is justified in using any degree of physical force, including deadly physical force, against another person when (1) the other person has made an unlawful entry into the dwelling; and (2) the occupant has a reasonable belief that the other person has committed, intends to commit, or is committing a crime in addition to the unlawful entry and might use physical force, no matter how slight, against an occupant. An individual who uses physical force under these circumstances is immune from criminal prosecution for the use of the force or civil liability for any resulting injuries or death.

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

Current Law: 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 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 specifies 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: (1) the use of unreasonable force; or (2) 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/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.” 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). Nationally, courts are split as to whether a duty to retreat exists under the castle doctrine in situations involving cohabitants, guests, and invitees.

Background: In 2005, Florida enacted castle doctrine legislation that includes immunity from criminal prosecution and civil action and provisions awarding court costs and fees. While Florida courts had adhered to the castle doctrine in the past, the doctrine was not codified. Though the law is centered around the castle doctrine, it contains some true man doctrine features. The law extended the castle doctrine, including the right to stand ground and use deadly force, to occupied vehicles, mobile homes, and places where the individual has a right to be, including public places. The law also includes presumptions

of fear of death or great bodily harm that warrant the use of deadly force for unlawful entry into a dwelling, residence, or occupied vehicle.

Twenty-one states (Alabama, Alaska, Arizona, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, West Virginia, and Wyoming) have enacted castle doctrine legislation in recent years. With the exception of Indiana, Kansas, and South Dakota, the enacted legislation in all of the states addressed civil as well as criminal liability. Many of the civil immunity provisions preclude assailants from suing for medical bills and other damages as a result of any injuries that are inflicted by an individual who was a victim of a crime at the time the injuries were inflicted and direct courts to award court costs and fees to victims.

Additional Information

Prior Introductions: HB 1071 of 2008 received an unfavorable report from the House Judiciary Committee. HB 455/SB 518 of 2007 received hearings in the House Judiciary and Senate Judicial Proceedings committees, respectively, but no further action was taken. HB 589 of 2006 received an unfavorable report in the House Judiciary Committee. The cross file, SB 870, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, *Castle Doctrine and Self-Defense in Civil Cases*, Connecticut Office of Legislative Research Report 2008-R-0320, May 30, 2008, *The Columbus Dispatch*, Department of Legislative Services

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