

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 214
Judiciary

(Delegate Conaway)

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 against a person or property in addition to the uninvited 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.

The bill's provisions do not apply if the person who is not the occupant is (1) a law enforcement officer, firefighter, or emergency response personnel performing official duties or (2) a person with express permission to enter the dwelling.

Fiscal Summary

State Effect: Potential minimal decrease in general fund 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 offenses involved in the types of cases affected by the bill.

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

Small Business Effect: None.

Analysis

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.

These laws, especially Florida’s statute, became a focus of national debate and discussion as a result of the Trayvon Martin case. On February 26, 2012, Trayvon Martin, an unarmed 17 year old, was shot to death by George Zimmerman, a neighborhood watch

captain who approached Martin despite being advised by 9-1-1 operators to remain in his vehicle when he called to report a “suspicious person” in the neighborhood. Zimmerman, who was eventually acquitted of second degree murder, claimed self-defense and did not seek a “stand your ground” immunity hearing, which would have required Zimmerman to prove by a preponderance of the evidence that his actions were lawful under Florida’s statute. According to news reports, had Zimmerman sought and prevailed at a pretrial “stand your ground” hearing, no criminal or civil trial could have proceeded.

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: Several similar bills have been introduced in recent years. HB 992 of 2010, HB 985 of 2009, and HB 1075 of 2008 all received unfavorable reports 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 by the House Judiciary Committee. Its 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, State’s Attorneys’ Association, CNN.com, National Public Radio; National Conference of State Legislatures, Department of Legislative Services

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