Department of Legislative Services

Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1215 (Delegate Cox, *et al.*)
Judiciary

Criminal Law – Crimes Against Property – Right to Defend Property (Castle Doctrine)

This bill establishes that an occupant of a dwelling is justified in using physical force, including deadly physical force, against another person if (1) the other person has made an unlawful entry into the dwelling; (2) the occupant reasonably believes, in fear for their life, that force or deadly force is necessary to repel an attack by the other person; and (3) the amount and nature of the force used by the occupant is reasonable under the circumstances. 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 responder 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. Revenues are not affected.

Local Effect: Potential minimal decrease in circuit court expenditures due to fewer criminal prosecutions of the types of cases affected by the bill. Revenues are not affected.

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 March 9, 2017, at least 25 states have enacted such laws (Alabama, Alaska, Arizona, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia). In at least 10 of these states, the statute includes "stand your ground" language.

Additional Information

Prior Introductions: Similar bills have been introduced during previous legislative sessions. HB 1309 of 2018 received an unfavorable report from the House Judiciary Committee. HB 608 of 2017 received an unfavorable report from the House Judiciary Committee. Its cross file, SB 1011, received a hearing in the Senate Judicial Proceedings Committee but was later withdrawn. HB 1185 of 2014 received an unfavorable report from the House Judiciary Committee. Similar legislation was also introduced in the 2006 through 2010 sessions.

Cross File: None.

Information Source(s): Garrett County; Maryland Association of Counties; City of Laurel; Maryland Municipal League; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of State Police; National Conference of State Legislatures; Department of Legislative Services

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