

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 870 (Senator Jacobs, *et al.*)
Judicial Proceedings

Protection of Persons and Property - Immunity

This bill sets forth statutory provisions regarding the use of force in defense of persons or property.

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

Bill Summary: The bill creates a statutory justification for a person who uses force, except for deadly force, against an individual if the person reasonably believes that the use of force is necessary to (1) defend the person or another against imminent use of unlawful force by the individual; or (2) prevent or terminate the trespass by the individual onto real property in which the person or a member of the person's immediate family has a possessory interest, or that the person has a legal duty to protect.

The bill also creates a statutory justification for use of deadly force if the person reasonably believes that the use of deadly force is necessary to prevent (1) imminent or

serious bodily harm to the person or another; or (2) imminent commission of a forcible felony.

The bill provides that a person who is not engaged in unlawful activity and is in a place where the person has a right to be has no duty to retreat when attacked or threatened with the use of force.

A person who unlawfully and forcibly enters or attempts to enter a person's dwelling or occupied vehicle is statutorily presumed to be doing so with the intent to commit a forcible felony.

The bill also creates a statutory presumption that a person reasonably believed use of deadly force was necessary in self-defense if the attacker against whom the deadly force was used had, or was in the process of (1) unlawfully and forcibly entering a dwelling or occupied vehicle; or (2) removing a third person from a dwelling or occupied vehicle against the third person's will.

This presumption does not apply if the person subject to the deadly force (1) had a right to be in the dwelling or vehicle; or (2) had lawful custody or guardianship of the third person being removed from the dwelling or vehicle. The presumption also does not apply if the person using deadly force (1) was engaged in unlawful activity; or (2) knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer acting in an official capacity.

Persons justified in using force under this bill are immune from criminal prosecution and civil action. This immunity does not apply if the person knew or reasonably should have known that the person subject to the force was a law enforcement officer acting in an official capacity. If a court finds that a defendant in a civil action is entitled to civil immunity under this bill, the court is required to award reasonable attorney's fees, court costs, compensation for loss of income, and all legal expenses incurred by the defendant.

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 accused 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. 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 person 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 the true man doctrine, a person has the right to stand his ground against an attacker and is under no obligation to retreat and can use force, and if reasonable, deadly force against his 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: (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 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: In 2005, Florida enacted castle doctrine legislation similar to this bill, including 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 person 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.

Additional Information

Prior Introductions: None.

Cross File: HB 589 (Delegate Cluster, *et al.*) – Judiciary.

Information Source(s): State's Attorneys' Association; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Chapter 2005-27, Laws of Florida; Senate Staff Analysis and Economic Impact Statement, CS/SB 436, Criminal Justice Committee, Florida Legislature; 40 Am. Jur.2d *Homicide* §§ 164, 167 (1999); Department of Legislative Services

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