

COMMITTEE BILL ANALYSIS

Bill: House Bill 40

Printer's No.: 1038

Sponsor: Representative Perry

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Synopsis: Commonly referred to as “the Castle Doctrine legislation,” this bill amends provisions of the Crimes Code, Title 18 of the Pennsylvania Consolidated Statutes, relating to the use of force, and other provisions relating to firearms. The bill also amends the Judicial Code, Title 42, to provide for civil immunity for the use of force.

Summary:

Use of force

The bill amends section 505 of the Crimes Code, relating to the use of force in self-protection. An actor is presumed to have a reasonable belief that deadly force is immediately necessary to protect him against death, serious bodily injury, kidnapping or sexual intercourse compelled by force or threat if the following conditions exist:

(1) The person against whom the force is used is unlawfully and forcefully entering or has entered and is present within a dwelling, residence or occupied vehicle; or the person against whom the force is used is unlawfully and forcefully removing someone against their will from the dwelling, residence or occupied vehicle. The definition of “dwelling” is amended to include an attached porch, deck or patio. A “residence” is defined as a dwelling in which a person resides or visits as an invited guest. A “vehicle” is a conveyance designed to transport people or property.

(2) The actor knows or has reason to believe that the unlawful and forceful entry or act is occurring or has occurred.

This presumption does not apply if any of the following apply:

(1) The person against whom the force is used has the right to be in or is a lawful resident of the dwelling, residence or vehicle.

(2) The person sought to be removed is a child or grandchild in the lawful custody of the person against whom the force is used.

(3) The actor is engaged in a criminal activity. “Criminal activity” is defined as conduct which is a misdemeanor or felony, is not justifiable, and is related to the confrontation between the actor and the person against whom force is used.

(4) The person against whom the force is used is a peace officer acting in the performance of his duties.

An actor who is not engaged in criminal activity, who is not in illegal possession of a firearm and who is attacked in any place where the actor would normally have a duty to retreat, has no duty to retreat and has the right to stand his ground and use force, including deadly force, if all of the following apply:

(1) The actor has a right to be in the place where he is attacked.

(2) The actor believes it is immediately necessary to use force to protect himself against death, serious bodily injury, kidnapping or sexual intercourse.

(3) The person against whom the force is used displays a firearm or any other weapon readily or apparently capable of lethal use.

The exception to the duty to retreat does not apply if the person against whom force is used is a peace officer acting in the performance of his official duties and the actor using force knew or reasonably should have known that the person was a peace officer.

Unless an exception applies, a person who unlawfully and by force enters an actor’s dwelling, residence or occupied vehicle, or removes someone else against their will from the actor’s dwelling, residence or occupied vehicle, is presumed to be doing so with the intent to commit an act resulting in death or serious bodily injury or kidnapping or sexual intercourse by force or threat.

Section 506, relating to the use of force for the protection of other persons, is amended. A person may use force to protect a third person. The actor is not obliged to retreat to any greater extent than the person whom he seeks to protect.

Firearms

Section 3903 of the Crimes Code, relating to theft offenses, is amended to make theft a first degree felony in the case of theft by receiving stolen property when the property received, retained or disposed of is a firearm and the receiver is in the business of buying or selling stolen property.

Section 6102 is amended to further define the term “loaded.” Generally, “loaded” includes a magazine containing ammunition if it is in the same compartment as the firearm. If the magazine is inserted into a pouch, holder, holster or other protective device that provides for a complete and secure enclosure of the ammunition then it shall be deemed to be in a separate compartment.

A provision is added to section 6109 prohibiting any Commonwealth agency from regulating the possession of firearms in any manner inconsistent with the provisions of the Crimes Code.

Civil immunity

A section is added to the Judicial Code providing civil immunity for an actor who uses force. The actor is immune from civil liability for the personal injuries sustained by a perpetrator which were caused by the acts or omissions of the actor as a result of the use of force.

The section defines a “perpetrator” as a person against whom an actor is justified in using force under the Crimes Code provisions relating to the use of force. Those provisions include the use of force in self-protection (section 505), in the protection of other persons (section 506), for the protection of property (section 507), in law enforcement (section 508), or consistent with the actor’s special responsibility for care, discipline or safety of others (section 509).

If the actor prevails in a civil action initiated by or on behalf of a perpetrator against the actor, the court shall award reasonable expenses to the actor including attorney fees, expert witness fees, court costs and compensation for loss of income.

Effective date

This act takes effect in 60 days.

Background: The House of Representatives passed House Bill 40 on April 12, 2011 by a vote of 164 to 37.

Findings

The bill contains a findings provision. The General Assembly finds that it is proper for law-abiding people to protect themselves, their families and others from intruders and attackers without fear of prosecution or civil action. The Castle Doctrine is a common law doctrine which declares that a home is a person’s castle. The State constitution guarantees that the “right of the citizens to bear arms in defense of themselves and the State shall not be questioned.”

Furthermore, persons residing in or visiting Pennsylvania have a right to expect to remain unmolested within their homes and vehicles. No person should be required to surrender his personal safety to a criminal, nor should a person be required to needlessly retreat in the face of intrusion or attack outside the person’s home or vehicle.

Current law

An individual is justified in using deadly force and has no duty to retreat if he is inside his dwelling or place of work. Outside of an individual’s dwelling or place of work, before using deadly force an individual has a duty to retreat or surrender the item the other person is trying to take. The law does not allow an individual to “stand his ground” in the face of an imminent threat and instead, requires the individual to retreat if he can do so in complete safety.

As for the use of force in the protection of others, an individual is justified in using deadly force to protect a third person if he would be justified in using the same level of force to protect himself, it appears that the third person would be justified in using such force, and the individual believes that his intervention is necessary to protect the third person. There is a duty to retreat only if he knows that he can do so in a way that will secure the complete safety of the third person.

Legislative history

Last session the House of Representatives passed this legislation as House Bill 40 by a vote of 159 to 38. By a vote of 41 to 8 the Senate amended the substance of House Bill 40 into House Bill 1926 (which otherwise addressed issues relating to Megan’s Law). The Senate passed House Bill 1926 as amended by a vote of 45 to 4. The House of Representatives concurred in the Senate amendments by a vote of 161 to 35. Governor Rendell vetoed House Bill 1926, 2010 Veto No. 5.

The Senate passed identical legislation, Senate Bill 273, introduced by Senator Alloway, on March 8, 2011 by a vote of 43 to 4.