



Judicial Impact Statement

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Prepared by Judge William A. Grim (retired)

SB 237, HB 381 – Stand Your Ground

SB 237, HB 381

Sen. Johnson
Reps. Keller, Hood

Title Information

To amend sections 2307.601, 2901.05, and 2901.09 and to enact sections 2901.091 and 2901.092 of the Revised Code to enact the Ohio Stand Your Ground Act to modify the law regarding self-defense..

Background

One traditional element of self-defense has been the duty to retreat when feasible before using deadly force in self-defense. That was modified in Ohio, effective 2008, by the adoption of the Castle Doctrine which established that there was no duty to retreat from one's residence or vehicle before using deadly force, and established a presumption that deadly force used in defense of home or vehicle was self-defense. The Stand Your Ground doctrine, in its most basic form, takes that lack of duty to retreat one step further, making it applicable to anywhere a person has a right to be. Nationwide, the Stand Your Ground doctrine, in one form or another, is the law in at least 25 states, and by court decisions, probably 8 more. A Stand Your Ground law, without any enhancements, is an abolishment of the common law duty to retreat as an element of self-defense and is a straightforward legislative policy decision.

Judicial Impact

A significant portion of these bills go beyond expanding the availability of self-defense, changing it from an affirmative defense to an immunity from civil and criminal prosecution. It no longer is a defense to be litigated at trial but, as proposed, now a presumed bar to prosecution or civil litigation. See proposed RC 2901.092 at lines 337 to 357. The implementation of this immunity has substantial judicial impact in the following respects.

Current law, as amended March 29, 2019, requires some evidence of self-defense be introduced, though not necessarily by the defense. There must now be some testimony that raises the issue. The proposed law, at RC 2901.092 at lines 345 to 351, requires law enforcement to do an evaluation of the elements of self-defense and not to arrest without finding probable cause that self-defense does not apply. This may create a pretrial issue, similar to a Motion to Suppress, as to whether law enforcement met this requirement.

If there is an arrest, the proposed law, at RC 2901.05 at lines 119 to 145, allows self-defense to be raised by the accused, not by evidence, but by a notice filed with the clerk of courts. This notice creates a prima facie claim of self-defense which the prosecution must rebut by clear and convincing evidence at a pretrial immunity hearing. This pretrial immunity hearing will require witnesses to disprove one or more of the remaining elements of self-defense: Not at fault, reasonable belief in imminent harm, or use of excessive force. The defense has no burden of going forward and no risk of non-persuasion. Only if the prosecution can disprove self-defense at this pretrial evidentiary hearing can the matter proceed to trial. At the trial, the prosecution would need to not only prove the elements of the offense but again,

What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

this time probably to a jury rather than to a judge, to disprove one or more of the elements of self-defense. Unlike a Motion to Suppress pretrial resolution, the pretrial immunity hearing decision denying immunity is not final. Comparable provisions for civil immunity are found at RC 2307.061 at lines 86 to 119.

Such immunity procedure doubles not only courtroom time necessary to adjudicate issues but also the number of appearances and possible continuances for witnesses who are necessary. Such imposition on witnesses certainly contradicts the spirit, if not the letter, of Marsy's Law. Will the victims have a right of interlocutory appeal if immunity is granted? This immunity proposal should be evaluated by the criteria of the Marsy's Law constitutional provisions.

Additionally, there is an enhancement in the proposed law that has a separate policy decision beyond abolishing the duty to retreat. This is found in lines 321 to 336 regarding RC 2901.091. This language extends the justified use of deadly force beyond defense of self or of another person from bodily harm to prevent or halt the commission of a forcible felony. This would be triggered even without any fear of imminent physical harm to the actor, which is another traditional element of self-defense. As such, the provision has less in common with self-defense than it does with justifying private citizen law enforcement.

Conclusion

The enactment of a basic Stand Your Ground law, which negates any duty to retreat in most circumstances, is not problematic. The addition of the ability to use deadly force to prevent "forcible felonies" to be considered as self-defense is a substantial policy change which policy until now has had the goal of preventing physical harm. The substantial change in concept of self-defense from a trial issue to an immunity with required pretrial evidentiary determination creates procedural difficulties for courts, prosecutors and victims.