

May 30, 2008

2008-R-0320

CASTLE DOCTRINE AND SELF DEFENSE IN CIVIL CASES

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You asked for a summary of CGS § 53a-19(b); an explanation of the castle doctrine; the law in Connecticut regarding self defense in a lawsuit seeking damages for injury or death; and recent castle doctrine legislation in Connecticut and in other states regarding self defense.

SUMMARY

CGS § 53a-19 establishes the circumstances under which a person can use physical force and deadly physical force to defend himself or someone else without being convicted for assault, manslaughter, or murder. This law does not explicitly address civil cases in which the injured person or his or her estate seeks damages caused by using force in self defense.

Under this statute, a person may use reasonable physical force on another person to defend himself, herself, or a third person from what he or she reasonably believes to be the use or imminent use of physical force. The defender may use the degree of force he or she reasonably believes is necessary to defend himself, herself, or a third person.

The law establishes special rules for using deadly force to defend one's self or another person. Specifically, the law prohibits anyone from using such force unless he or she (1) reasonably believes that the attacker is using or about to use deadly physical force or inflicting or about to inflict great bodily harm and (2) knows he or she cannot avoid the need to use deadly force by retreating. But the law specifies that a person does not have to retreat before using deadly force if he or she is in his or her dwelling or workplace.

A related statute establishes the circumstances under which someone can use force to defend his or her premises. Under this law, a person who possesses or controls property, or has a license or privilege to be in or on it, can use reasonable physical force when and to the extent he or she reasonably believes it to be necessary to stop another from trespassing or attempting to trespass in or upon it.

Just as in the case of using deadly force for self defense or a defense of another person, the law establishes special rules for using deadly force in defense of premises. Specifically, the law allows a person who possesses or controls property, or has a license or privilege to be in or on it, to use deadly physical force only:

1. to defend himself, herself, or someone else if he or she reasonably believes that the attacker is using or about to use deadly physical force or inflicting or about to inflict great bodily harm;
2. when he or she reasonably believes it is necessary to prevent the trespasser from attempting to commit arson or any violent crime; or
3. to the extent he or she reasonably believes it is necessary to stop someone from forcibly entering his or her dwelling or workplace, and for the sole purpose of stopping the intruder (CGS § 53a-20).

Generally, the “castle doctrine” provides that someone attacked in his or her home can use reasonable force, which can include deadly force, to protect his or her or another's life without any duty to retreat from the attacker. It is defined differently in different states.

The defense of self-defense is available to a defendant faced with the intentional torts of civil assault and battery, as long as there is sufficient evidence in support of that defense. This defense is also available in lawsuits where the plaintiff claims it was the defendant's negligence that caused his or her injuries because the defendant used more force than was reasonably necessary under the circumstances. This defense will prevail only if the jury (or judge in a non-jury trial) concludes that the defendant acted reasonably under the circumstances with respect to (1) the need to use force and (2) the degree of force actually used.

Connecticut adopted its penal code in 1969, with an October 1, 1971 effective date, after the completion of a six-year study by a commission established to revise the state's criminal laws. Connecticut's law has remained essentially the same since its adoption and we found no legislation to revise the self defense laws in Connecticut in recent years.

In recent years, a number of states have adopted or considered bills referred to as “castle doctrine” bills. We found 20 states that adopted a “castle doctrine” bill in the last three years. These states are: Alabama, Alaska, Arizona, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, West Virginia, and Wyoming. The enacted bills in all but three of these states (Indiana, Kansas, and South Dakota) explicitly deal with civil as well as criminal liability.

These bills have also been called “stand your ground” bills because they often eliminate the duty to retreat from any place where the person is legally allowed to be.

Many of these states substantially changed their self-defense statutes by:

1. expanding the definition of residence where there is no duty to retreat before using deadly force to include a person's motor vehicle, porch;
2. adopting no duty to retreat before applying deadly force if the person using the force had the right to be where he or she was;
3. creating a presumption that an assailant intends to commit an unlawful act by force or by violence;
4. creating a presumption of necessity regarding the use of deadly force to repel the threat;
5. creating a presumption of reasonableness regarding the level of force used;
6. granting immunity from both civil actions and criminal prosecution;
7. imposing a prohibition against arrest; and
8. directing courts to award court costs, attorney fees, loss of income, and other expenses to the defendant (35 S. U. L. Rev. 1, 2007).

Connecticut law (1) restricts the right of a person to use deadly force without retreating to a person's dwelling or workplace (2) does not explicitly define a dwelling to include a porch or a vehicle (3) contains none of these presumptions (4) has no immunity or prohibition against arrest, and (5) does not require courts to award costs, attorney's fees, or loss of income.

We have enclosed a recent OLR report that addresses what other states have recently done to change their self defense laws ([2007-R-0052](#)).

CONNECTICUT-CRIMINAL LAW-DEFENSE OF PERSON OR PROPERTY AS JUSTIFICATION TO USE FORCE OR DEADLY FORCE

A person may not be convicted of a crime for using physical force or deadly physical force under certain circumstances. The person using the force has the burden of introducing testimony or other evidence to show that he or she was using force to defend himself, herself, or another person, or his or her premises, or other property under the circumstances established by the following statutes. Once he or she introduces this evidence, the state has the burden of disproving it beyond a reasonable doubt.

Physical Force in Self Defense or in Defense of Others

A person is justified in using reasonable physical force on another person to defend himself or a third person from what he or she reasonably believes to be the use or imminent use of physical force. The defender may use the degree of

force he or she reasonably believes is necessary to defend himself, herself, or a third person (CGS §53a-19(a)).

But the law specifies that a person is not justified in using physical force when

1. with intent to cause physical injury or death to another person, he or she provokes the person to use physical force;
2. use of such force was the product of a combat by agreement not specifically authorized by law; or
3. he or she is the initial aggressor unless he withdraws from the encounter, effectively communicates this intent to the other person, and the other person continues to or threatens to use physical force (CGS § 53a-19(c)).

Deadly Force in Defense of Self or Others

The law establishes special rules for using deadly force for self defense or the defense of others. Specifically it prohibits people from using deadly force for self defense or the defense of someone else unless they reasonably believe that an attacker is using or about to use deadly physical force or inflicting or about to inflict great bodily harm on them or someone else (CGS § 53a-19(b)).

Additionally, the law prohibits people from using deadly force for self defense or the defense of someone else if they know they can avoid doing so with complete safety by:

1. retreating,
2. surrendering possession to property the aggressor claims to own, or
3. obeying a demand that he not take an action he is not otherwise required to take.

But the law specifies that someone does not have to retreat from his or her dwelling or workplace before using deadly force in self defense or in defense of someone else if he or she was not the initial aggressor. The law defines a “dwelling” as a building, which is usually occupied by a person lodging there at night (CGS §53a-100));

Lastly, a person is not justified in using physical force when (1) with intent to cause physical injury or death to another person, he or she provokes the person to use physical force; (2) use of such force was the product of a combat by agreement not specifically authorized by law; or (3) he or she is the initial aggressor, unless he or she withdraws from the encounter, effectively

communicates this intent to the other person, and the other person continues to or threatens to use physical force) (CGS § 53a-19).

Physical Force to Defend Premises

A person who possesses or controls property or has a license or privilege to be in or on it is justified in using reasonable physical force when and to the extent he reasonably believes it to be necessary to stop another from trespassing or attempting to trespass in or upon it (CGS § 53a-20).

Deadly Force to Defend Premises

Just as in the case of self defense the law establishes special rules for using deadly force to defend premises. Specifically, the law allows someone who possesses or controls property, or has a license or privilege to be in or on it, to use deadly physical force only:

1. for self defense or the defense of someone else unless he or she reasonably believe that an attacker is using or about to use deadly physical force, or inflicting or about to inflict great bodily harm on him or her or on someone else;
2. when he or she reasonably believes it is necessary to prevent the trespasser from attempting to commit arson or any violent crime; or
3. to the extent he or she reasonably believes it is necessary to stop someone from forcibly entering his or her or her home or workplace and for the sole purpose of stopping the intruder (CGS § 53a-20).

Physical Force in Defense of Property

A person is justified in using reasonable physical force when and to the extent he or she reasonably believes it necessary to (1) prevent attempted larceny or criminal mischief involving property or (2) regain property that he or she reasonably believes was stolen shortly before.

When defending property, deadly force may be used only when it is necessary to defend a person from the use or imminent use of deadly physical force or infliction or imminent infliction of great bodily harm as described above (CGS § 53a-21).

CONNECTICUT COURT DECISIONS ON SELF DEFENSE

Use of Force

Under a theory of self defense, a criminal defendant basically admits engaging in the conduct, but claims that his or her or her conduct was legally justified (*State v. Collins*, 100 Conn. App. 833 (2007)).

Belief of Use of Force by Another

A person may justifiably use deadly force in self-defense only if he reasonably believes both (1) his or her attacker is using or about to use deadly physical force against him, or is inflicting or about to inflict great bodily harm and (2) that deadly force is necessary to repel such an attack (*State v. Abney*, 88 Conn. App. 495, cert den. 274 Conn. 906 (2005)).

Degree of Force

Whether or not a person was justified in using force to protect his or her person or property is a question of fact that focuses on what the person asserting the defense reasonably believed under the circumstances (*State v. DeJesus*, 194 Conn. 376, 389 (1984)). The test for the degree of force in self-defense is a subjective-objective one. The jury must view the situation from the defendant's perspective; this is the subjective component. The jury must then decide whether the defendant's belief was reasonable; this is the objective component.

The court expanded on this or her explanation in 2003. It held that this or her subjective-objective inquiry into a defendant's belief regarding the necessary degree of force requires that the jury make two separate affirmative determinations in order for a defendant's claim of self defense to succeed. First, the jury (or court if the defendant has elected a court trial and not a jury trial) must determine whether, on the basis of all of the evidence presented, the defendant in fact had believed that he or she had needed the degree of force he or she used. Second, it must decide whether the defendant's beliefs were reasonable from the perspective of a reasonable person in the defendant's circumstances (*State v. Wortham*, 80 Conn. App. 635, cert. denied 268 Conn. 901, (2003)).

Duty to Retreat

A person has no duty to retreat before using deadly force if he or she is attacked in his or her own dwelling. But this rule does not apply if a person is threatened by someone who also dwells there (*State v. James*, 54 Conn. App. 26 cert. den. 251 Conn. 903 (1999)). There is no duty to retreat before non-deadly force is used regardless of where the attack occurs (*State v. Fabricatore*, 89 Conn. App. 729 (2005)).

Burden of Proof

Self defense is a defense rather than an affirmative defense. Thus a defendant must introduce sufficient evidence to warrant presenting his or her claim of self defense to the jury. Once the defendant has done so, it is up to the state to disprove it beyond a reasonable doubt (*State v. Abney*, 88 Conn. App. 495, cert. den. 274 Conn. 906 (2005)).

CONNECTICUT-SELF DEFENSE IN LAWSUITS FOR DAMAGES

Someone who is being sued because he or she intentionally used force that injured or killed someone else may raise the defense of justifiable use of force as long as there is sufficient evidence presented to support that defense (*Brown v. Robishaw et al.* , 282 Conn. 628 (2007); *Manning v. Michael*, 188 Conn. 607, 610 (1982); *Hanauer v. Coscia*, 157 Conn. 49 (1968); *Laffin v. Apalucci*, 130 Conn. 153 (1943)). This defense is also available in lawsuits alleging that it was the defendant's negligence that caused his or her injuries because the defendant used more force than was reasonably necessary under the circumstances.

This defense will be successful only if the jury concludes that the defendant acted reasonably under the circumstances with respect to the need to use force and the degree of force actually used. If the force used was unreasonable or unjustifiable the claim of self defense will not shield the defendant from civil liability (*Brown v. Robishaw et al.* , 282 Conn. 628 (2007)).

We were unable to find any civil case involving the use of force or deadly force to stop the forcible entry into a house or car, but it appears that under these circumstances the issues would be the same: did the defendant reasonably believe that he or she needed to use force or deadly force and was the amount and the nature of force he or she used reasonable under the circumstances.

Our courts have ruled that the jury must consider the reasonableness of the defendant's conduct based on the circumstances as they reasonably appeared to the defendant at the time, rather than on the circumstances actually existing (*Laffin v. Apalucci*, 130 Conn. 153 (1943)).

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