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BILL ANALYSIS

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Senate Bills 1046 and 1185 (as enrolled)
House Bills 5142, 5143, 5153, and 5158 (as enrolled)
Sponsor: Senator Alan L. Cropsey (S.B. 1046)
Senator Ron Jelinek (S.B. 1185)
Representative Tom Casperson (H.B. 5142)
Representative Rick Jones (H.B. 5143)
Representative Leslie Mortimer (H.B. 5153)
Representative Tim Moore (H.B. 5548)
Senate Committee: Judiciary
House Committee: Judiciary

Date Completed: 7-17-06

RATIONALE

Michigan law regarding a person's right to use deadly force in self-defense is not expressed in statute, but is embodied in the common law as interpreted by case law. According to a 2002 Michigan Supreme Court case (*People* v *Riddle*, 467 Mich 116), a person has the right to use deadly force in self-defense if he or she honestly and reasonably believes that using such force is necessary because he or she is in danger of imminent death or great bodily harm. Generally, a person acting in self-defense has a duty to retreat from the attack if he or she can do so safely, but retreat is never required in the person's own home, nor is retreat required in the case of a sudden and fierce violent attack or if the person honestly and reasonably believes the attacker is about to use a deadly weapon. Some people believe that the right to defend against an attack, and the circumstances under which force is justified in self-defense or the defense of others, should be codified and that a person defending himself, herself, or another should not have to retreat when he or she is anywhere he or she has a legal right to be.

CONTENT

House Bill 5143 would create the "Self-Defense Act" to do all of the following:

-- Specify that a person could use deadly force against another individual, without a duty to retreat, if he or she were not engaged in the commission of a crime and honestly and reasonably believed that force was necessary to prevent imminent death, bodily harm, or sexual assault.

-- Specify that an individual could use less-than-lethal force against another individual, without a duty to retreat, if he or she were not engaged in the commission of a crime and honestly and reasonably believed that force was necessary in defense against the other individual's imminent unlawful use of force.

-- State that, except as provided above, the proposed Act would not modify the common law with regard to the duty to retreat before using deadly force or force other than deadly force.

-- Provide that the proposed Act would not diminish self-defense rights available under the common law.

Senate Bill 1046 and House Bill 5153 would create new acts, Senate Bill 1185 and House Bill 5548 would amend the Revised Judicature Act, and House Bill 5142 would amend the Code of Criminal Procedure, to do all of the following:

-- Establish a rebuttable presumption in a civil or criminal case that a person who used force in compliance with

the proposed Self-Defense Act had an honest and reasonable belief that imminent death, sexual assault, or great bodily harm would occur if certain conditions existed, and specify circumstances under which the presumption would not apply.

-- Specify that a duty to retreat before using deadly force would not apply if an individual were in his or her own dwelling or within the curtilage of that dwelling.

-- Provide that an individual who used force in compliance with the proposed Self-Defense Act would commit no crime in using that force.

-- Establish civil immunity for a person who used force in compliance with the proposed Self-Defense Act.

-- Require a court to award attorney fees and costs to a person sued for using force, if that use of force were in compliance with the proposed Self-Defense Act and the person were immune from civil liability (as provided above).

The bills are tie-barred and would take effect on October 1, 2006.

House Bill 5143

Under the proposed Self-Defense Act, an individual who had not or was not engaged in the commission of a crime could use deadly force against another person, anywhere he or she had the legal right to be, with no duty to retreat, if the individual honestly and reasonably believed that the use of deadly force was necessary to prevent either of the following:

-- The imminent death of, or imminent great bodily harm to, himself or herself or another individual.

-- The imminent sexual assault of himself or herself or another individual.

An individual who had not or was not engaged in the commission of a crime also could use force, other than deadly force, against another individual anywhere he or she had the legal right to be, with no duty to retreat, if he or she honestly and reasonably believed that the use of that force was necessary to defend himself or herself or another individual from the imminent unlawful use of force by another individual.

The bill specifies that, except as provided above, it would not modify Michigan's common law in existence on October 1, 2006, regarding the duty to retreat before using deadly force or force other than deadly force. The bill also states that it would not diminish an individual's right to use force, in self-defense or defense of another individual, as provided by Michigan's common law in existence on that date.

Senate Bill 1046

Under the bill, it would be a rebuttable presumption in a civil or criminal case that an individual who used deadly force or force other than deadly force in compliance with the proposed Self-Defense Act had an honest and reasonable belief that imminent death of, sexual assault of, or great bodily harm to himself or herself or another individual would occur, if both of the following applied:

-- The person against whom force was used was in the process of breaking and entering a dwelling or business premises or committing home invasion, had broken and entered a dwelling or business premises or committed home invasion and was still present in the dwelling or business premises, or was unlawfully attempting to remove another individual from a dwelling, business premises, or occupied vehicle against his or her will.

-- The individual using force honestly and reasonably believed that the person was engaging in conduct described above.

The rebuttable presumption would not apply, however, if any of the following circumstances existed:

-- The person against whom force was used, including an owner, lessee, or titleholder, had the legal right to be in the dwelling, business premises, or vehicle and there was not an injunction for protection from domestic violence or a written pretrial supervision order, a probation order, or a parole order of no contact against that person.

-- The individual removed or being removed from the dwelling, business premises, or occupied vehicle was a child or grandchild of, or was otherwise in the lawful custody of or under the lawful guardianship of, the person against whom force was used.

-- The individual who used force was engaged in the commission of a crime or was using the dwelling, business premises, or occupied vehicle to further the commission of a crime.
-- The person against whom force was used was a peace officer who had entered or was attempting to enter a dwelling, business premises, or vehicle in the performance of his or her official duties in accordance with applicable law.

The presumption also would not apply if the person using the force had a history of domestic violence as the aggressor and the individual against whom force was used were his or her spouse or former spouse, an individual with whom he or she had a dating relationship, an individual with whom he or she had a child in common, or a resident or former resident of his or her household.

The bill would define "dwelling" as a structure or shelter that is used permanently or temporarily as a place of abode, including an appurtenant structure attached to that structure or shelter. "Business premises" would mean a building or other structure used for the transaction of business, including an appurtenant structure attached to that building or other structure. "Vehicle" would mean a conveyance of any kind, whether or not motorized, that is designed to transport people or property.

"Domestic violence" would mean that term as defined in the domestic violence prevention and treatment Act, i.e., the occurrence of any of the following acts by a person that is not an act of self-defense:

-- Causing or attempting to cause physical or mental harm to a family or household member.
-- Placing a family or household member in fear of physical or mental harm.
-- Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.
-- Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

Senate Bill 1185

The bill would require the court to award the payment of actual attorney fees and costs to an individual who was sued for civil damages for allegedly using deadly force or force other than deadly force against another person, if the court determined that the individual used force in compliance with the proposed Self-Defense Act and that the individual was immune from civil liability under Section 2922b of the Revised Judicature Act (which House Bill 5548 would enact).

House Bill 5142

The bill specifies that, in cases in which the proposed Self-Defense Act did not apply, Michigan's common law would apply, except that the duty to retreat before using deadly force would not be required if an individual were in his or her own dwelling or within the curtilage of that dwelling.

"Dwelling" would mean a structure or shelter that is used permanently or temporarily as a place of abode, including an appurtenant structure attached to that structure or shelter.

House Bill 5153

The bill specifies that an individual who used deadly force or force other than deadly force in compliance with the proposed Self-Defense Act and who had not or was not engaged in committing a crime at the time he or she used force, would commit no crime in using that force.

If a prosecutor believed that a person used force that was unjustified under the Self-Defense Act, the prosecutor could charge the person with a crime arising from the use of force and, at the time a warrant was issued, at the time of any preliminary examination, and at the time of any trial, would have to present to the judge or magistrate evidence that established that the person's actions were not justified under the Self-Defense Act.

House Bill 5548

The bill specifies that an individual who used deadly force or force other than deadly force in self-defense or the defense of another in compliance with the proposed Self-Defense

Act would be immune from civil liability for damages caused to either of the following by the use of that force:

-- The individual against whom the use of force was authorized.
-- Any individual claiming damages arising out of injury to or the death of the individual against whom the use of force was authorized, based on his or her relationship to that individual.

Proposed MCL 600.2922c (S.B. 1185)
Proposed MCL 768.21c (H.B. 5142)
Proposed MCL 600.2922b (H.B. 5548)

BACKGROUND

In *People* v *Riddle* (467 Mich 116), the Michigan Supreme Court discussed the principles of self-defense, the duty to retreat, and the applicability and scope of the so-called "castle doctrine". The defendant was convicted of second-degree murder in the Third Circuit Court (Wayne County) but appealed on the ground that the jury was not given an instruction that a person has no duty to retreat from the threat of force while in his or her own dwelling. Since the shooting occurred in the backyard outside the defendant's house, and not in the dwelling itself, the trial court declined to give the jury that instruction. The Court of Appeals affirmed, holding that the defendant had a duty to retreat if safely possible before exercising deadly force unless he was inside his dwelling or an inhabited outbuilding within the curtilage (the area of land surrounding a dwelling).

The Supreme Court affirmed the conviction (but vacated the Court of Appeals decision in part). The Supreme Court reaffirmed the common-law principles that existed in Michigan when the State's "murder statute" was enacted in the first Penal Code in 1846. The Court held that, as a general rule, the taking of another's life in self-defense is justifiable if the person "honestly and reasonably believes that he is in imminent danger of death or great bodily harm and that it is necessary for him to exercise deadly force". The necessity element of self-defense normally requires the person to try to avoid the use of lethal force, if he or she can do so safely and reasonably. "If it is possible to safely avoid an attack then it is not *necessary*, and therefore not permissible, to exercise deadly force against the attacker" (emphasis in original).

The Court further held that "a person is *never* required to retreat from a sudden, fierce, and violent attack; nor is he required to retreat from an attacker who he reasonably believes is about to use a deadly weapon" (emphasis in original). The Court stated that, "under such circumstances a reasonable person would, as a rule, find it necessary to use force against force without retreating. The violent and sudden attack removes the ability to retreat."

Also, according to *Riddle*, "regardless of the circumstances, one who is attacked in his dwelling is *never* required to retreat where it is otherwise necessary to exercise deadly force in self-defense" (emphasis in original). Since "a person's dwelling is his primary place of refuge", the Court held that when "a person is in his 'castle,' there is simply *no safer place* to retreat" (emphasis in original). The Court declined to extend the common law by applying this "castle doctrine" to outlying areas within the curtilage of the home; rather, it limited the doctrine's application to the home and its attached appurtenances, such as a garage, porch, or deck. Even though other courts have extended the castle doctrine to other areas, the *Riddle* Court concluded that "there is simply no basis in the case law of this state, contemporaneous with the enactment of our initial murder statute, to justify extending the rule in this manner".

In addition, the Court ruled that, "Michigan law imposes an *affirmative obligation* to retreat, where safely possible, in one narrow set of circumstances: where a defendant—who is not in his 'castle'—is voluntarily engaged in mutual, nondeadly combat that escalates into sudden deadly violence" (emphasis in original). According to the Court, this was the only situation in which English common law imposed upon a defender an affirmative duty to retreat, and Michigan adhered to this rule at the time the murder statute was codified.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The ability of a person to defend himself or herself against physical attack is a fundamental right. Indeed, Article I, Section 6 of the Michigan Constitution cites defense of self in its declaration of the right to keep and bear arms. The situations under which the use of deadly force is justifiable in self-defense are not spelled out in the Constitution or in statute, however, but derive from the common law as interpreted in case law. The bills essentially would codify existing case law that interprets the common law right of a person to defend himself or herself with deadly force. Consistent with the *Riddle* decision, House Bill 5143, the proposed Self-Defense Act, would allow a person to use deadly force if he or she honestly and reasonably believed that death, great bodily harm, or sexual assault may be imminent. In addition, House Bill 5142 would codify the "castle doctrine" described in *Riddle* by providing that the duty to retreat before using deadly force would not apply to the dwelling of the individual using force in self-defense. The bill also would extend that doctrine to the curtilage of the dwelling, which would be consistent with the majority of jurisdictions employing the castle doctrine.

Response: The bills would go well beyond the traditional self-defense rights laid out in case law. If the legislation actually were codifying case law, it would specify that necessity was always required in the use of deadly force in defense of self or others; that there was a general duty to retreat from use of deadly force; that retreat was not necessary in the case of a sudden, fierce attack; and that retreat was never required in the case of an attack in the dwelling of the person being attacked.

Supporting Argument

The bills would offer new protections to crime victims who act in self-defense or defense of others. By enacting a rebuttable presumption in a civil or criminal case that an individual who used force in defense of himself or herself or another had an honest and reasonable belief that imminent death, sexual assault, or great bodily harm would occur under certain circumstances, Senate Bill 1046 would ensure that a person was not easily exposed to criminal or civil liability for self-defense actions.

In addition, by establishing that an individual would not be committing a crime in using that force in compliance with the Self-Defense Act, House Bill 5153 would guard against overzealous prosecution of a person who used force to repel an attacker. If a prosecutor believed a person claiming self-defense did not act within the constraints of the Self-Defense Act, the prosecutor could investigate and pursue charges but would have to overcome the rebuttable presumption in Senate Bill 1046 and present evidence to that effect at each stage of the criminal proceedings, as House Bill 5153 would require.

Similarly, under House Bill 5548, an individual who used force in self-defense or defense of another in compliance with the Self-Defense Act would not be civilly liable for damages caused to the person against whom the use of force was authorized or to anyone claiming damages arising out of injury to or the death of the person against whom force was used, based on their relationship. This would insulate crime victims from frivolous lawsuits filed by their attackers based on the victims' actions in protecting themselves. People who act in self-defense should not have to spend the time or money to go to court, or experience the stress of doing so, to justify their actions in protecting themselves or others.

To qualify for the rebuttable presumption and the criminal and civil immunity, the person using force would have to have done so in compliance with the Self-Defense Act, which includes a requirement that the person using force was not otherwise committing a crime. Thus, the bills contain safeguards against criminals' manipulation of the system to claim self-defense for actions against their victims or rivals.

Response: The rebuttable presumption and civil and criminal immunity provisions are not needed. Prosecutors testified before the Senate Judiciary Committee that great deference routinely is given to people acting in self-defense, and nobody who appeared before the committee could identify a prosecutorial abuse in which someone acting legitimately in self-defense was charged with a crime. Indeed, in a recent highly publicized case in Detroit, the Wayne County prosecutor opted not to file a murder charge against the man who shot and killed the rapper known as "Proof" because he acted in self-defense after Proof shot the man's cousin.

In addition, Michigan's civil justice system includes sufficient safeguards against frivolous lawsuits, and the bills' proponents did not contend that Michigan has had a problem with civil actions against those acting in self-defense.

Opposing Argument

The bills would go too far in extending self-defense protections that have long been available under the common law. The duty to retreat, except in the defender's home (the castle doctrine) or in the face of a sudden and fierce attack, is a hallmark of that common law doctrine. The bills essentially would eliminate this duty by providing an exception for any location where the defender has a legal right to be. This would include locations, such as a crowded neighborhood street, a shopping mall concourse, or a children's playground, where using deadly force to intervene on another person's behalf likely would escalate an already dangerous situation and could result in injury or death to innocent bystanders.

Also, the definitions of "dwelling" and "vehicle" in Senate Bill 1046, the rebuttable presumption legislation, are so broad as to encompass such things as a tent and a bicycle. Under that bill, a person conceivably could be justified in using deadly force against someone who did something as minor as entering the person's camping tent uninvited or attempting to steal the bike the person was riding.

There have been no cases in Michigan suggesting a need for the bills' broadened protections against criminal and civil liability for those who use force in self-defense or defense of others. In testimony before the Senate Judiciary Committee, proponents of the measures frequently referred to the mid-1920s case of Dr. Ossian Sweet, an African American man who defended himself and his family from a crowd of white protestors gathering outside of Dr. Sweet's home in a previously all-white Detroit neighborhood after someone threw a brick through a window of the house. Some also relayed anecdotal recollections of a Lansing-area case in which a woman apparently was sued after hitting an intruder in her home with a jar of pennies. None, however, could cite recent cases in which people acting in self-defense were prosecuted for their actions or sued for injuries or death caused by their use of force. Moreover, Dr. Sweet and his family members were exonerated and the woman in the jar-of-pennies case apparently prevailed as well.

In addition, far from protecting victims of crime from retribution for acting in self-defense, the bills could insulate criminals from prosecution and civil liability for their actions. At least two prosecutors expressed concerns about so-called "murder by invitation", in which someone asks a person to his or her home, kills the person, and makes it appear as if he or she had been breaking in and the killing was justifiable self-defense. Also, prosecutors and a representative of the domestic violence prevention and treatment board raised concerns about domestic abusers' being able to claim their actions were in self-defense.

The common law right to act in self-defense, particularly in one's own home, has long been recognized in Michigan and the *Riddle* decision provides sufficient protections to ensure that those who honestly and reasonably believe they are threatened by physical harm may use force in response to that threat. The bills simply are not needed.

Response: The *Riddle* Court's interpretation of the exception from the duty to retreat is too narrow, not even encompassing the yard or unattached buildings (such as a garage or barn) on the grounds of a defender's home. A person defending himself or herself or another from imminent peril should be free to meet force with force when necessary, regardless of the location.

While there may not have been an abundance of criminal or civil cases in Michigan against people who used force in self-defense, the bills would serve to preempt the possibility of such prosecution or litigation. While the defendants prevailed in the two cases described above, those parties still had to hire attorneys and go through court proceedings.

The bills would not protect criminals or encourage criminal behavior. The self-defense authorization and protections would not apply if the person using force were committing a crime, and the rebuttable presumption in Senate Bill 1046 would not apply to a person who had a history of domestic violence and used force in a domestic situation. Also, the "murder by

invitation" scenario is as likely to occur under current law as it would be under the bills.

Opposing Argument

The bills essentially would eliminate any duty to retreat before using force in an act of self-defense or defense of others. As such, the legislation would undermine the common law concept of necessity in the use of force for self-defense. In the *Riddle* opinion, the Michigan Supreme Court stated, "If it is possible to safely avoid an attack then it is not *necessary*, and therefore not permissible, to exercise deadly force against the attacker" (emphasis in original).

Response: In a footnote to that opinion, the Court noted that the majority of jurisdictions employing the castle doctrine have extended it to the curtilage surrounding the home and that several jurisdictions have extended the doctrine to numerous areas beyond the dwelling, including cars, businesses, and the homes of third parties. While the *Riddle* Court declined to expand the castle doctrine, the Court said, in the footnote, "Thus, we leave it to the Legislature to decide whether there are other places in which a defendant's failure to retreat cannot be considered as a factor in determining whether it was necessary for him to exercise deadly force in self-defense."

Opposing Argument

The bills could foster a "just shoot" attitude that could lead to vigilantism or, at least, careless use of dangerous weapons in public. A *Detroit Free Press* editorial characterized the legislation as "unnecessary, imprudent and even dangerous", and suggested that Michigan law should not prohibit lawsuits in self-defense cases, whose merits are properly decided in court ("Deadly Defense", 2-27-06). The editorial agreed with the president of the Prosecuting Attorneys Association of Michigan that the law should discourage, rather than encourage, violent confrontations.

Response: The bills would not encourage people to act recklessly or take the law into their own hands, but merely would provide needed protections to those who find themselves in situations requiring the use of force to defend themselves or others. The same sort of "wild west" scenarios were forecast by opponents of Public Act 381 of 2000, which amended the handgun licensure Act to require that a license to carry a concealed weapon be issued if certain criteria are met. That law did not result in widespread misuse of firearms and neither would this legislation.

Opposing Argument

Senate Bill 1185 would require the court to award the payment of actual attorney fees and costs to an individual who was sued for civil damages for allegedly using force in compliance with the Self-Defense Act, if the court determined that the individual was immune from civil liability under House Bill 5548. In written testimony submitted to the Senate committee, the State Bar of Michigan expressed a serious concern regarding the provisions for the award of court costs and attorney fees, which are the equivalent of "loser pay" provisions, something the Bar has historically opposed. The Bar believes that judicial discretion is an important consideration in self-defense cases. "The determination of whether the conditions described in the bill apply to a particular situation and whether an individual acted reasonably in using force and is entitled to the immunity granted by the bill is very fact-specific…The imposition of a 'loser-pays' condition on top of the presumption and immunity provisions of the bill could serve to discourage the true victim in situations involving some ambiguous circumstances from bringing a meritorious case." Michigan judges generally have the authority to award attorney fees and costs if the plaintiff brings a frivolous claim. According to the Bar, "It is important to be able to maintain this discretion, and to avoid a mandatory system that precludes judicial review of a specific case and circumstances."

Opposing Argument

By authorizing force in the face of a perceived threat, without any duty to retreat, the bills would conflict with lessons that a civil society teaches its children. Many parents, schools, religions, and community organizations stress avoiding confrontation, but the bills suggest that the proper response to a potentially dangerous situation is to elevate conflict by meeting force with force, even if an avenue of retreat is available.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 1046 and House Bills 5142, 5143, and 5153

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many individuals have been convicted of crimes for using defensive force. Florida, Indiana, Georgia, Alabama, Arizona, and other states have enacted similar legislation, but too recently to determine if there was any fiscal impact. To the extent that the bills would provide criminal immunity not already defined in law for individuals who use defensive force, these individuals would avoid conviction. State and local governments would incur reduced incarceration costs.

Senate Bill 1185 and House Bill 5548

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Lindsay Hollander
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.