House of Representatives

General Assembly

File No. 544

February Session, 2024

House Bill No. 5505

House of Representatives, April 17, 2024

The Committee on Judiciary reported through REP. STAFSTROM of the 129th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING SELF-DEFENSE, DEFENSE OF A THIRD PERSON AND ASSISTING IN OR EFFECTING AN ARREST AS AFFIRMATIVE DEFENSES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2024*) In any case where a defendant has a claim to the affirmative defense of the justified use of physical force in (1) defense of such person pursuant to subsection (a) of section 53a-19 of the general statutes, (2) defense of a third person pursuant to subsection (a) of section 53a-19 of the general statutes, or (3) assisting in or effecting an arrest of a person or preventing the escape of an arrested person pursuant to subsection (e) or (g) of section 53a-22 of the general statutes, such defendant may request a hearing on a motion to dismiss such case or individual charge, as applicable, in advance of trial. A judge of the Superior Court shall hear such motion not later than forty-five days following such request by the defendant. If the defendant establishes by a preponderance of the evidence that such defendant qualifies for the affirmative defense, the judge shall dismiss the case or charge, as applicable.

Sec. 2. Subsection (b) of section 54-63b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2024*):

(b) The Court Support Services Division shall establish written uniform weighted release criteria based upon the premise that the least restrictive condition or conditions of release necessary to ensure the appearance in court of the defendant and sufficient to reasonably ensure the safety of any other person will not be endangered is the pretrial release alternative of choice. Such criteria shall be based on, but not be limited to, the following considerations: (1) The nature and circumstances of the offense insofar as they are relevant to the risk of nonappearance; (2) the defendant's record of previous convictions; (3) the defendant's past record of appearance in court after being admitted to bail; (4) the defendant's family ties; (5) the defendant's employment record; (6) the defendant's financial resources, character and mental condition; **[**and**]** (7) the defendant's community ties, and (8) any affirmative defense available to such defendant.

Sec. 3. Subsection (b) of section 54-64a of the 2024 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2024*):

(b) (1) Except as provided in subsection (c) of this section, any arrested person charged with the commission of a class A felony, a class B felony, except a violation of section 53a-86 or 53a-122, a class C felony, except a violation of section 53a-87, 53a-152 or 53a-153, or a class D felony under sections 53a-60 to 53a-60c, inclusive, section 53a-72a, 53a-95, 53a-103, 53a-103a, 53a-114, 53a-136 or 53a-216, or a family violence crime, as defined in section 46b-38a, is presented before the Superior Court, said court shall, in bailable offenses, promptly order the release of such person upon the first of the following conditions of release found sufficient to reasonably ensure the appearance of the arrested person in court and that the safety of any other person will not be endangered: (A) Upon such person's execution of a written promise to appear without special conditions, (B) upon such person's execution of a written

promise to appear with nonfinancial conditions, (C) upon such person's execution of a bond without surety in no greater amount than necessary, or (D) upon such person's execution of a bond with surety in no greater amount than necessary, but in no event shall a judge prohibit a bond from being posted by surety. In addition to or in conjunction with any of the conditions enumerated in subparagraphs (A) to (D), inclusive, of this subdivision, the court may, when it has reason to believe that the person is drug-dependent and where necessary, reasonable and appropriate, order the person to submit to a urinalysis drug test and to participate in a program of periodic drug testing and treatment. The results of any such drug test shall not be admissible in any criminal proceeding concerning such person.

(2) The court may, in determining what conditions of release will reasonably ensure the appearance of the arrested person in court and that the safety of any other person will not be endangered, consider the following factors: (A) The nature and circumstances of the offense, (B) such person's record of previous convictions, (C) such person's past record of appearance in court after being admitted to bail, (D) such person's family ties, (E) such person's employment record, (F) such person's financial resources, character and mental condition, (G) such person's community ties, (H) the number and seriousness of charges pending against the arrested person, (I) the weight of the evidence against the arrested person, (J) the arrested person's history of violence, (K) whether the arrested person has previously been convicted of similar offenses while released on bond, (L) the likelihood based upon the expressed intention of the arrested person that such person will commit another crime while released, **[**and**]** (M) the heightened risk posed to victims of family violence by violations of conditions of release and court orders of protection, and (N) any affirmative defense available to such arrested person.

(3) When imposing conditions of release under this subsection, the court shall state for the record any factors under subdivision (2) of this subsection that it considered and the findings that it made as to the danger, if any, that the arrested person might pose to the safety of any

other person upon the arrested person's release that caused the court to impose the specific conditions of release that it imposed.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*October 1, 2024*	New section
Sec. 2	*October 1, 2024*	54-63b(b)
Sec. 3	*October 1, 2024*	54-64a(b)

JUD *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which establishes a new affirmative defense, is not anticipated to result in a fiscal impact to the state or to municipalities as the agency has the expertise and resources to meet the requirements of the bill.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis

HB 5505

AN ACT CONCERNING SELF-DEFENSE, DEFENSE OF A THIRD PERSON AND ASSISTING IN OR EFFECTING AN ARREST AS AFFIRMATIVE DEFENSES.

SUMMARY

For any case involving the use of physical force, this bill allows a defendant to request a pre-trial hearing on a motion to dismiss the case or individual charges against him or her if the defendant claims, as a defense, that he or she was justified in using physical force when (1) defending himself, herself, or someone else or (2) as a private person or as directed by certain officials, assisting in or effecting an arrest or preventing an escape (see BACKGROUND). The judge must hear the motion within 45 days and dismiss the case or charge if the defendant establishes by a preponderance of the evidence that he or she qualifies for the defense. (The bill refers to these defenses as "affirmative defenses," however, by law, they are justification defenses (see CGS § 53a-16). Among other differences, the two defenses have distinct burdens of proof if raised at a trial (see CGS § 53a-12).)

The bill also adds the availability of affirmative defenses to the list of factors that (1) the judicial branch's Court Support Services Division (CSSD) must consider when creating uniform criteria for releasing arrestees and (2) judges may consider when determining conditions of release for people arrested for certain serious offenses.

EFFECTIVE DATE: October 1, 2024

CSSD UNIFORM CRITERIA FOR ARRESTEE RELEASE

By law, CSSD must establish written, uniform, weighted criteria for releasing an accused after an arrest, with a required preference for the

least restrictive release conditions (1) necessary to ensure the defendant's court appearance and (2) sufficient to reasonably ensure that anyone else's safety will not be endangered. Existing law requires the criteria to be based on certain factors, such as the defendant's past convictions and financial resources. The bill also requires the criteria to consider any affirmative defense available to the defendant.

COURT FACTORS FOR CERTAIN SERIOUS OFFENSES

By law, when an arrested person is presented to the court for certain serious crimes, the court generally must promptly order the person's release on the first of the following conditions sufficient to reasonably ensure the person's appearance in court and that another person's safety will not be endangered: (1) written promise to appear without special conditions, (2) written promise to appear with non-financial conditions, or (3) bond, with or without surety, in no greater amount than necessary. (Courts cannot require cash-only bail.) This applies if the person is charged with a class A felony; a class B or C felony, with limited exceptions; one of certain class D felonies; or a family violence crime.

Existing law specifies several factors that the court may consider in setting the release conditions. The bill additionally allows the court to consider any affirmative defense available to the person.

By law, different provisions apply to the release criteria for (1) serious firearm offenses or (2) other crimes (CGS § 54-64(a) & (c)).

BACKGROUND

Justified Use of Force to Defend Self or Others

By law, a person is generally justified in using reasonable physical force to defend himself, herself, or a third person from what he or she reasonably believes to be the use or imminent use of force, and may use the degree of force reasonably believed necessary. Generally, a person can instead use deadly force if he or she reasonably believes that someone is using or about to use deadly physical force or inflict great bodily harm on them or someone else.

But despite these provisions, a person cannot use deadly force if he or she can avoid doing so with complete safety by (1) retreating, with certain exceptions (such as not having to do so at the person's home); (2) surrendering possession to property the other person claims to own; or (3) obeying a demand to not take an action he or she is not otherwise required to take.

The law provides certain other exceptions to the justified use of physical force, such as if the person provoked the attack with intent to cause injury or death to someone else (CGS § 53a-19).

Justified Use of Force by Private People Helping in Arrests or to Prevent Escapes

By law, a person who has been directed by a peace officer or certain other officials to assist the officer or official to effect an arrest or prevent an escape from custody is justified in using reasonable physical force when and to the extent that the person reasonably believes is necessary to carry out the officer's or official's direction (CGS § 53a-22(e)). (Different criteria apply to the deadly use of force in this situation; the bill's pre-trial hearing provisions do not reference those cases.)

The law also allows a private person, acting on their own, to use reasonable physical force when and to the extent he or she reasonably believes is necessary to effect an arrest or to prevent the escape from custody of an arrested person whom the person reasonably believes to have committed an offense and who in fact has done so. But the person is not justified in using deadly force except when allowed by the self-defense law described above (CGS § 53a-22(g)).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable
Yea 36 Nay 0 (03/28/2024)