
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)