Amendments to Pa. Law Change Self-Defense Landscape

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The state’s laws on self-defense are about to undergo a radical change. In 2011, Pennsylvania’s new law allows individuals to use deadly force when they believe it is necessary to prevent death or serious bodily injury. This change is expected to have significant implications for attorneys and law enforcement officials.

According to the new law, which took effect on August 27, 2011, individuals have a duty to retreat prior to using deadly force. If they do not, they may be deemed “negligent” and face criminal charges.

The state’s definition of “criminal activity” has also been relaxed. In the past, only actions that were part of a “continuing course of criminal activity” were considered to be criminal activity. The new law expands this definition to include any conduct that is part of a “criminal transaction.”

The law also changes the standard for proving self-defense. In the past, individuals had to prove that they were acting in self-defense beyond a reasonable doubt. Now, the standard is “probable cause.”

The cumulative changes to section 505 are significant for a more practical purpose. The new law removes the burden of proving self-defense from the prosecution. In the past, it was the prosecution’s burden to prove beyond a reasonable doubt that the defendant did not act in self-defense. Now, the burden is on the prosecution to prove that the defendant did not act in self-defense.

The statute shifts the focus from a defendant’s credibility to a simple application of the facts to the law. The new law changes the standard for proving self-defense from a reasonable doubt to a preponderance of the evidence.

Self-defense case law establishes the historical importance of a fact-based qualitative analysis. Judicial opinions are replete with extensive thoughtful discussions of the many different circumstances in which a self-defense claim is made and the appropriateness of the related jury instruction. In the past, although a prosecutor could always exercise discretion and decline prosecution, if a prosecution proceeded to a jury trial, an actor’s peers were responsible for analyzing the facts to affirm or repudiate the morality of the slaying and whether it legitimately occurred in self-defense.

Under the new law, there may be fewer prosecutions in circumstances where the homicide investigator, prosecutor, or judge finds a “no-retreat” claim in a deadly weapon claim. In death cases where the self-defense claim is made and the appropriateness of the related jury instruction is given, the standard is that the defense must be an easy determination. Conversely, if the defense is not, then no charges should be brought.

In many self-defense cases, it will be evident that the defendant acted in self-defense, which the law suggests should be an easy determination. The legal presumption is that a defendant acted in self-defense and may use deadly force to protect himself or herself.

The third substantial change to § 505 encompasses two requirements that in any case invoking § 505(b) (2.3) (cases outside the home and a refusal to retreat), the defendant not only had a subjective fear, but that it was reasonable. The new presumption may be rebutted if the defendant’s credibility to a simple application of the facts to the law to ascertain if the new statutory requirements for an excused killing were met.

This shift requires police investigators to properly and completely accumulate the evidence, contemplate the new law, and, in the heat of the moment, conclude whether a suspect should be arrested and charged with murder or not. The consequences of their decision will include thousands of dollars in investigative expenses, legal fees and potentially unwarrented pretrial incarceration. Conversely, if it factually appears that a suspect acted in self-defense, which the law suggests should be an easy conclusion to reach, then no charges should be brought.

When have the police been hired, trained or commanded to investigate facts to exonerate an alleged murderer? Will police departments “arrest and charge now but investigate later” because solving capabilties be able to adequately manage and investigate the potential number of homicides the law will bring? In light of the many competing interests the new law has created, all in the name of the right to carry a firearm and bear arms, only one thoughts springs to mind: “If it isn’t broken, don’t fix it.”

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