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GOVERNMENT, POLICE & FIRE

## PA House Judiciary Passes Amended Castle Doctrine

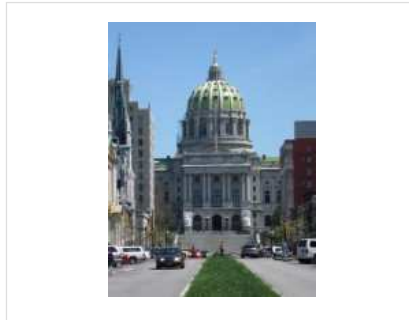
Amendment adds individuals' conflict with police officers to 'duty to retreat.'

By **Darwynn Deyo** March 9, 2011

An amended proposal to extend the "Castle Doctrine" outside the home passed the state House Judiciary Committee on Monday.

State Rep. Scott Perry, R-York, who introduced the bill, defended his legislation, saying the "Castle Doctrine" under H.B. 40 would extend the same self-defense protections that exist inside a defendant's rightful place of residence to areas outside the home.

Referencing the exemption from the duty to retreat even in a public setting, where an individual has the right to be and where he or she is not involved in criminal activity, Perry said, "I would contend that a bullet in the back is as bad as a bullet in the front."



The Castle Doctrine was passed by the state House and state Senate last session, but was vetoed by former Gov. Ed Rendell.

Max Nacheman, executive director of CeaseFire PA, an anti-gun group, said passing the legislation would be a mistake.

"A lot of people are confused about this issue because some people have been misleading," said Nacheman. "The Castle Doctrine is law in Pennsylvania. In your own home you may use deadly force without retreating...and you can do the same thing anywhere else you're allowed to be if you can't retreat safely."

Nacheman said the expansions under H.B. 40 could lead to deadly violence over parking spaces and gang turf wars.

"This expansion enlarges that zone...to pretty much wherever you happen to be," he said. "That doesn't make sense. We just think that self-defense is one thing; it's a sacred right that we don't think should be infringed on. The Castle Doctrine was supposed to be to protect yourself and your home. Outside of that, if you can walk away safely, I don't see any reason why anyone would have to use deadly force."

The amendment passed Monday preempts the application of the Castle Doctrine to law enforcement officers and was introduced by state Rep. Ron Marsico, R-Dauphin.

"It's (a police officer's) duty to identify themselves by...announcing who they are with a badge," said Marsico. "(Defendants) knew, or should have known, the individual is a police officer so they have a responsibility to determine whether or not a peace officer is in their home and the peace officer also has the responsibility to identify themselves."

That the provision "knew or should have known" could lead to problems for defendants when a police officer does not properly identify themselves during a raid is unlikely, said David Rittgers, legal policy analyst for The Cato Institute, because the burden of proof is on the prosecution.

The Cato Institute is a Washington, D.C.-based public policy think tank dedicated to the principles of individual liberty, limited government, free markets and peace, according to its website.

"The language is probably right and that's a common legal standard," he said. "To prove that they factually knew, you're asking the court to peer inside the mind of someone. Unless they gave some outward indication of that, verbally saying that they saw someone was a police officer...the 'knew or should have known standard' is appropriate."

The Cato Institute has documented police raids across the country, including 10 cases in Pennsylvania, in which police officers or the FBI raided the wrong residence or failed to identify themselves, leading the residents to think they were being attacked.

"A lot of times it'll be at night and they'll yell 'Police!' outside while everyone is asleep," said Rittgers. "Once the door is down and the officers have made entry, the procedures that the officers are operating under should have them continuing to announce that they are police. That's where a lot of tragedies can arise, moreso than the standards than the use of force for self defense.

Jack Lewis, press secretary for the Pennsylvania State Police, said state police troopers are required to identify themselves as part of any raid.

"When a police officer intends to enter a residence, the officer first must knock on the door and announce that he or she is a law enforcement officer," said Lewis. "The officer then must wait a 'reasonable' amount of time before attempting to enter the residence. The amount of time that is considered 'reasonable' has not been specified by case law."

If a state trooper does not abide by those standards, there are measures in place to penalize the troopers.

“The officer would be in violation of court rulings,” said Lewis. “In case of troopers, the individual could be subject to disciplinary action. Also, the officer could face civil action.”

*Darwyn Deyo is a reporter for PA Independent.*

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