



STATE OF VERMONT
GENERAL ASSEMBLY

May 12, 2021

Governor Philip B. Scott
109 State Street
The Pavilion
Montpelier, VT 05609

Dear Governor Scott:

This letter is in response to your letter dated May 11, 2021, regarding H.145 and your concerns regarding the availability of defenses for intervenors using deadly force to prevent the commission of a violent crime. Under the common law, the defenses of self-defense and defense of others are available to such intervenors, and the changes made to 13 V.S.A. § 2305 in H.145 do not eliminate them or limit their application.

In State v. Buckley, 202 Vt. 371 (2016), the Vermont Supreme Court noted that defense of others is “essentially an extension of the self-defense instruction, in that the actor may do in another’s defense anything the person himself may have lawfully done in the circumstances.” Quoting State v. Bolden, 371 S.W.3d 802, 805 (Mo. 2012). In the Buckley decision, the Court described the prevailing rule for defense of others as: “one is justified in using reasonable force in defense of another person, even a stranger, when he reasonably believes that the other is in immediate danger of unlawful bodily harm from his adversary and that the use of such force is necessary to avoid this danger...” and as with self-defense, the actor “may not use more force than he reasonably believes necessary to relieve the risk of harm.” 202 Vt. 371, 381 (2016). In its analysis, the Court also looked to the State v. Hoadley decision, which describes the essential requirements of defense of others as “(1) a reasonable person in defendant’s position would believe his intervention necessary for defense of third person, and (2) in such circumstances as that reasonable person would take them to be, third person would have right to use such force to protect himself.” State v. Hoadley, 147 Vt. 49, 54 (1986).

Self-defense and defense of others under the common law are available to intervenors now and will continue to be available once H.145 becomes law.

It was not the intent of the General Assembly to limit the application of these common law defenses, nor does H.145 have the effect of limiting them.

We thank you for your work in reviewing this important legislation.

Sincerely,

Senator Dick Sears, Chair, Senate Committee on Judiciary
Representative Maxine Grad, Chair, House Committee on Judiciary

cc: Bacca Balint, President Pro Tempore of the Vermont Senate
Jill Krowinski, Speaker of the Vermont House