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March 2, 1999

The Honorable J. Joseph Curran, Jr.
Attorney General of Maryland
200 Saint Paul Place
Baltimore, MD 21202-2120

Re: Self Defense / Police Responsibility

Dear Mr. Curran:

Please clarify the following issues as codified by existing Maryland law:

- Police responsibility and/or obligation to protect and defend private citizens
- Police responsibility and/or obligation to protect society as a whole
- Police civil liability when response time is too slow to prevent injury or death
- Circumstances under which the police can use deadly force to protect life
- Circumstances under which the police can use deadly force to protect property
- Circumstances under which private citizens can use deadly force to protect life
- Circumstances under which private citizens can use deadly force to protect property
- Circumstances under which private citizens have an obligation to retreat when confronted by an intruder in the home
- Circumstances under which private citizens have an obligation to retreat when confronted by an attacker on a public street or in a public place

As always, please feel free to contact me with any questions that you may have.

Kindest personal regards,

John H. Josselyn
Legislative Vice President

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

CARMEN M. SHEPARD
DEPUTY ATTORNEY GENERAL

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March 31, 1999

Mr. John H. Josselyn
Associated Gun Clubs of Baltimore, Inc.
P.O. Box 20102
Towson, Maryland 21284-0102

Dear Mr. Josselyn:

I have been asked by Attorney General Curran to respond to your letter of March 2, 1999. In your letter, you asked for clarification as to certain issues codified by existing Maryland law. In point of fact, with one exception, the nine issues you list are not codified in the Annotated Code of Maryland. To the extent that these issues have been addressed by Maryland's appellate courts, I will provide you with the relevant case citations.

1 & 2) Police responsibility and/or obligation to protect and defend private citizens, to protect society as a whole.

The Maryland State Police is charged, in Article 88B, Section 3 of the Annotated Code with "the general duty to safeguard the lives and safety of all persons within the State, to protect property, and to assist in securing to all persons the equal protection of the laws." However, the Maryland Court of Appeals has determined that police do not have a duty to protect individual citizens from the actions of other citizens absent a special relationship between the police and the victim or the police and the offender. See, Ashburn v. Anne Arundel County, 306 Md. 617 (1986)

3) Police civil liability when response time is too slow to prevent injury or death.

This issue is not addressed in statute. I have been able to find no appellate case law imposing such liability.

4) Circumstances under which the police can use deadly force to protect life.

This issue is not addressed in statute. In Tennessee v. Garner, 471 U.S. 1 (1985), the Supreme Court ruled that the use of deadly force was constitutionally permissible to protect the life of the officer or the life of another.

5) Circumstances under which the police can use deadly force to protect property.

This issue is not addressed in statute. There is no authority for a police officer to use deadly force to protect property.

6) Circumstances under which private citizens can use deadly force to protect life.

This issue is not addressed in statute. A private citizen may use deadly force in self defense or defense of another if death or serious bodily harm is threatened. The citizen must have reasonable grounds to believe himself, or another, in apparent immediate danger of death or serious bodily harm. See, Guerriero v. State, 213 Md. 545 (1957)

7) Circumstances under which private citizens can use deadly force to protect property.

This issue is not addressed in statute. There is no authority for a private citizen to use deadly force to protect property.

8) Circumstances under which private citizens have an obligation to retreat when confronted by an intruder in the home.

This issue is not addressed in statute. There is no duty to retreat if one is attacked in his or her own home: See, Redcross v. State of Maryland, 121 Md.App. 320 (1998).

9) Circumstances under which private citizens have an obligation to retreat when confronted by an attacker on a public street or in a public place.

This issue is not addressed in statute. Generally, Maryland law does impose a duty to retreat when confronted in a public place. See, Redcross v. State of Maryland, 121 Md.App. 320 (1998).

This letter does not constitute an official opinion of the Office of the Attorney General. You may wish to consult with your own counsel to obtain detailed advice on the issues you have raised.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark H. Bowen". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark H. Bowen
Assistant Attorney General
Maryland State Police