

The Expansion of the Castle Doctrine and its Effects

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INTRODUCTION

A heated debate has recently developed concerning Stand Your Ground (SYG) statutes and the extent to which deadly force is justified in self-defense actions. The discussion concerning such statutes gained a great deal of attention following the events that took place on the night of February 26, 2012, between George Zimmerman and Trayvon Martin, and the proceeding case of the State of Florida vs. George Zimmerman.¹ At the time of the incident, George Zimmerman was a 28-year-old student at Seminole State College and the coordinator of his neighborhood watch group.² Trayvon Martin was a 17-year-old high school student, who was temporarily staying with his father's fiancé at the same gated community as Zimmerman.³ On the night of February 26, 2012, an altercation ensued between Zimmerman and Martin; the altercation ultimately resulted in the fatal shooting of Martin by Zimmerman. Following the shooting, the Sanford police department initially took Zimmerman into custody. However, shortly after Zimmerman was released without any charges made against him. The Stanford police department stated that there is no cause for an arrest to be made due to the current self-defense statutes in Florida.⁴ Many people were in disbelief when they found out that Zimmerman was released after he fatally shot an unarmed teenager. However, due to growing unrest, criticism, and petitions, Zimmerman was charged with second-degree murder on April 11, 2012 by a prosecutor appointed by Governor Rick Scott.⁵ This began the trial of George Zimmerman, which ended on July 13, 2013, with a non-guilty verdict on all counts.⁶ The acquittal was not the verdict many were expecting, and the result was an even greater uproar over the SYG statute of the state of Florida, as well as other states that have passed such statutes into law.

¹ State v. Zimmerman (2013-CF-003316-A).

² **Manuel Roig-Franzia, Tom Jackman & Darryl Fears**, Who is George Zimmerman? The Washington Post (Mar. 22, 2012), http://www.washingtonpost.com/lifestyle/style/who-is-george-zimmerman/2012/03/22/gIQAkXdbUS_story.html.

³ Bianca Prieto, *Police turn over Trayvon Martin shooting case to State Attorney*, Orlando Sentinel (Mar. 13, 2012) <http://www.orlandosentinel.com/news/local/breakingnews/os-trayvon-martin-shooting-state-attorney-20120313,0,6200217.story>.

⁴ Madison Gray, *Trayvon Martin Case: George Zimmerman Charged With Second-Degree Murder*, TIME (Apr. 11, 2012), <http://newsfeed.time.com/2012/04/11/trayvon-martin-case-george-zimmerman-charged-with-second-degree-murder/>.

⁵ Id.

⁶ By Greg Botelho & Holly Yan, *George Zimmerman found not guilty of murder in Trayvon Martin's death*, CNN Justice (Jul. 14, 2013), <http://www.cnn.com/2013/07/13/justice/zimmerman-trial/>.

Historically, the right to self-defense has existed in this country since colonial days. The debate of self-defense and the rights governing the use of deadly force have been around for many decades. The statutes governing self-defense today are based largely on the old English common law principle of the Castle Doctrine. This paper will present a brief history of the Castle Doctrine, discuss present SYG statutes, present research conducted on the effects of SYG statutes, and make an argument about whether or not these statutes have had positive or negative effects on society since their passage into law.

THE CASTLE DOCTRINE

The common law of the Castle Doctrine has been the long standing origin of much of the self-defense legislature in this country. The Castle Doctrine derives its origin from medieval English common law. The doctrine states that an individual may use deadly force to protect his or herself, and have no duty to retreat, if the conflict takes place in one's dwelling.⁷ Individuals had the right to stand-their-ground, prior to the new statutes, as long as they were inside their dwelling. However, outside of their dwelling, an individual has the duty to retreat if there is an obvious and easy way to do so in order to defuse the situation. Under the doctrine, it is a person's duty to retreat and not engage in actions that could escalate the situation and result in great bodily harm or death.⁸

STAND YOUR GROUND STATUTES

The Florida Stand Your Ground statute took effect on October 1, 2005, after intense lobbying by the National Rifle Association (NRA).⁹ Florida became the first state to pass such laws, which extended the Castle Doctrine to areas outside ones dwelling.¹¹ Since the passage of the SYG statute, more than twenty additional states have passed similar SYG laws, using Florida's statute as a model for their own.¹² Prior to the new statute, the state of Florida followed the traditional self-defense principles described in the Castle Doctrine common law. People had a

⁷ Mark Randall & Hendrik DeBoer, *The Castle Doctrine and Stand Your Ground Law*, OLR Research Report, (Apr. 24, 2012), <http://cga.ct.gov/2012/rpt/2012-R-0172.htm>.

⁸ Id.

⁹ Joelle A. Moreno, *Perils of 'stand your ground'*, L.A. Times, Jul. 22, 2013, at A17.

¹⁰ Sean Sullivan, *Everything you need to know about 'stand your ground' laws*, The Washington Post, (Jul. 15, 2013), <http://www.washingtonpost.com/blogs/the-fix/wp/2013/07/15/everything-you-need-to-know-about-stand-your-ground-laws/>.

¹¹ Brian Callahan, *Campaign warns travelers of 'Shoot first' law*, St. John's Telegram, Oct. 22, 2005, at A1.

¹² Elizabeth Chuck, *Florida had first Stand Your Ground law, other states followed in 'rapid succession'*, NBC News, (Jul. 18, 2013), http://usnews.nbcnews.com/_news/2013/07/18/19522874-florida-had-first-stand-your-ground-law-other-states-followed-in-rapid-succession?lite.

duty to retreat if there was an obvious and easy way to do so prior to using deadly force.¹³ These prior self-defense statutes expressed deadly force as a means of last resort. The use of deadly force was still justified when used outside of one's home, as long as that was proven to be the means of last resort and that there had not been a clear and easy way for one to leave the area of conflict.

The new statute has taken the stand-your-ground principle from the Castle Doctrine and applied it to areas outside of one's dwelling. The new chapter that was passed by legislature in 2005, Chapter 776, has moved the stand-your-ground principal to any area one has a legal right to be.^{14 15} An individual no longer has a duty to retreat and can stand his or her ground outside of their dwelling. Statute 776.013 unreservedly states that:

“(3) A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.”¹⁶

Furthermore, the use of deadly force can be found justifiable and would not require one to retreat simply by the individual's belief of imminent threat of great bodily injury or death existing.¹⁷ Florida Statute 776.012 states:

“However, a person is justified in the use of deadly force and does not have a duty to retreat if:

- (1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony; or
- (2) Under those circumstances permitted pursuant to s. 776.013.”¹⁸

The new chapter provides individuals with immunity from criminal prosecution and civil action, as well as compensation for attorney fees, court fees, and lost income, if the defendant in a civil case is found to have had used justifiable use of force, and is therefore immune.¹⁹

¹³ Kris Hundley, Susan Taylor Martin & Connie Humburg, *Florida 'stand your ground' law yields some shocking outcomes depending on how law is applied*, Tampa Bay Time (Jun. 1, 2012), <http://www.tampabay.com/news/publicsafety/crime/florida-stand-your-ground-law-yields-some-shocking-outcomes-depending-on/1233133>.

¹⁴ Id.

¹⁵ Fla. Stat. Ann. § 776.013 (West) 2005.

¹⁶ Id.

¹⁷ Fla. Stat. Ann. § 776.012 (West) 2005.

¹⁸ Id.

STAND YOUR GROUND STATUTE ARGUMENTS

Many of the SYG statutes opponents have argued that the new statutes have lowered the cost of using deadly force and that the laws have been abused.²⁰ SYG legislation affects not only the costs associated with legal fees and prosecution, but has also lowered the likelihood that one will be found guilty of the death or injury of another.²¹ A study of two hundred SYG cases in Florida found that close to seventy percent of the defendants who plead SYG as a defense walked away free.²² Many critics of SYG statutes, including former New York City Mayor Michael Bloomberg, refer to them as “Shoot first” laws. The former Mayor expressed concerns that such laws protect and promote dangerous vigilantism and violent confrontations.²³ On the other hand, supporters of SYG laws consider such laws necessary. Supporters of SYG legislation in Illinois and Iowa have stated that there is a need for such legislation because they believe that victims should be able to use deadly force against an aggressor even if they are not at their home. Furthermore, these victims should not be treated as criminal.²⁴ Florida State Representative Dennis Baxley expressed his support of SYG statutes and said, “If we empower people to stop bad things from happening, they will.”²⁵ Representative Baxley stated that such statutes lower the occurrence of violent crimes.²⁶ Supporters have expressed the belief that an individual should be able to protect him or herself no matter where they are, and that they should not worry about civil or criminal lawsuits brought against them.²⁷

Many of the debates have simply been based on each group’s personal beliefs on the subject of self-defense. However, there had not been any studies out that could shed light on the subject and offer some factual data that could support either side of the argument. Research on this subject was impossible in the early years after the passage of SYG laws because there simply was not enough data available to create conclusive research. Arguments for and against SYG laws have tended to be based on political and personal beliefs without facts to back either side.

¹⁹ Fla. Stat. Ann. § 776.032 (West) 2005.

²⁰ Kris Hundley, Susan Taylor Martin & Connie Humburg, *Florida ‘stand your ground’ law yields some shocking outcomes depending on how law is applied*, Tampa Bay Time (Jun. 1, 2012), <http://www.tampabay.com/news/publicsafety/crime/florida-stand-your-ground-law-yields-some-shocking-outcomes-depending-on/1233133>.

²¹ *Id.*

²² *Id.*

²³ Maggie Haberman, *Mayor Bloomberg: End ‘shoot-first’ laws*, POLITICO (Jul. 14, 2013), <http://www.politico.com/story/2013/07/mayor-bloomberg-end-shoot-first-laws-gun-control-94123.html>.

²⁴ Brian Wellner & Mike Wiser, *Supporters of ‘Stand Your Ground’ laws in Iowa, Illinois don’t back down*, Quad-City Times (Mar. 24, 2012), http://qctimes.com/news/local/crime-and-courts/supporters-of-stand-your-ground-laws-in-iowa-illinois-don/article_d7c96230-756e-11e1-8477-0019bb2963f4.html.

²⁵ Interview with Dennis Baxley, Florida State Representative, MSNBC studios (Mar. 21, 2012), <http://video.msnbc.msn.com/newsnation/46811800/#46811800>.

²⁶ *Id.*

²⁷ *Id.*

Even though it might seem that the division over SYG laws is something novel, it is quite the opposite. Division on the subject of these laws can be traced back to the late eighteenth hundreds. The cases of *Beard v. U. S.*²⁸ and *Allen v. U.S.*²⁹ are a prime example of this. In the *Beard v. U.S.* case, the defendant Beard was accused of murdering an individual by the name of Will Jones. The dispute between Beard, Will Jones, and Jones' two other brothers by the names of John Jones and Edward Jones arose over the rightful ownership of a cow.³⁰ The Jones brothers trespassed on Beard's property with the expressed intent of taking the cow off of Beard's property. After Beard ordered the brothers to leave his property, Will Jones approached Beard in an angry manner with his left hand in his pocket.³¹ To this, Beard responded by hitting Jones across the head with his shotgun. The trauma of the strike led to Jones's death. After the court reviewed the case, the supreme court of Ohio stated that:

“The question, then, is simply this: Does the law hold a man who is violently and feloniously assaulted responsible for having brought such necessity upon himself on the sole ground that he failed to fly from his assailant when he might safely have done so? The law, out of tenderness for human life and the frailties of human nature, will not permit the taking of it to repel a mere trespass, or even to save life where the assault is provoked; but a true man, who is without fault, is not obliged to fly from an assailant, who by violence or surprise maliciously seeks to take his life, or to do him enormous bodily harm.”³²

The statement of the court supports the premise that one does not have a duty to retreat when they are faced with circumstances that could lead to a loss of one's life or great bodily harm. Two years later, in the case of *Allen v. U.S.*, the same court came to quite a different conclusion in regards to the extent of self-defense law and deadly force. In this case the defendant, Allan, was involved in a dispute with one Philip Henson. The dispute erupted into a fight resulting in Allen shooting and killing Henson. In regards to the case the court stated that:

“If he is attacked by another in such a way as to denote a purpose to take away his life, or to do him some great bodily harm from which death or permanent injury may follow, in such a case he may lawfully kill the assailant. When? Provided he use all the means in his power otherwise to save his own life or prevent the intended harm, such as retreating as far as he can, or disabling him without killing him, if it be in his power.”³³

²⁸ *Beard v. United States*, 158 U.S. 550, 15 S. Ct. 962, 39 L. Ed. 1086 (1895).

²⁹ *Allen v. United States*, 164 U.S. 492, 17 S. Ct. 154, 41 L. Ed. 528 (1896).

³⁰ *Beard v. United States*, 158 U.S. 550, 551, 15 S. Ct. 962, 39 L. Ed. 1086 (1895).

³¹ *Id.*

³² *Beard v. U.S.*, 158 U.S. 550, 561, 15 S. Ct. 962, 966 (U.S. 1895).

³³ *Allen v. U.S.*, 164 U.S. 492, 497, 17 S. Ct. 154, 156 (U.S. 1896).

As it can be seen, the second view has contradictions to the one given in the *Beard v. U.S.* case, in that it asks for one to first use any means to retreat. So which view is correct? The opposing views in these two cases resonate with much of the SYG law debates we see today. Should one use deadly force only after all other means have been exhausted? Or should one have no obligation to retreat?

RESEARCH ON STAND YOUR GROUND LAWS

Until recently, there weren't any studies available on the effects of SYG laws since their passage. As discussed earlier, such research was not unfeasible because enough years had not passed since the adoption of SYG laws in order to gather sufficient data. However, there have been several recent studies done in the area of SYG laws and the effects on society and public safety. These studies have been able to shed some light on the highly debated SYG laws.

One such research was conducted at Texas A&M University by Mark Hoekstra and Cheng Cheng.³⁴ Mark Hoekstra is the Associate Professor of Economics at Texas A&M University and holds a Ph.D. in Economics. Cheng Cheng is the research assistant to Mark Hoekstra and holds a M.S. in Applied Economics. The purpose of their research was to test whether SYG laws had a deterrent effect on crime and whether it influenced homicides.³⁵ The data used in the research was state-level crime data that was collected from the Federal Bureau of Investigation's (FBI) Uniform Crime Reports.³⁶ Hoekstra and Cheng compared the within-state changes in crime of states with SYG laws and the within-state crime data of states without such laws over the same time period. They also compare the within-state changes to states in the same geographical region in order to avoid any geographical region bias. The underlying belief of the research is that, if SYG laws have an effect on crime, it would show up in the comparison between states with SYG legislature and states without such laws.³⁷ After analyzing the data, Hoekstra and Cheng concluded, "Results indicate that the prospect of facing additional self-defense does not deter crime. Specifically, we find no evidence of deterrence effects on burglary, robbery, or aggravated assault. Moreover, our estimates are sufficiently precise as to rule out meaningful deterrence effects."³⁸ As it can be seen, the research of Hoekstra and Cheng boldly disprove any notions of SYG laws lowering crime rates. Moreover, their research found noteworthy evidence showing that states with SYG laws experienced more homicides. Their research pointed out that states with SYG laws experienced an increase of homicides by eight

³⁴ Mark Hoekstra & Cheng Cheng, Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? : Evidence from Expansions to Castle Doctrine, 48, *The Journal of Human Resources* 821 (2013).

³⁵ *Id.*

³⁶ *Id.*

³⁷ Mark Hoekstra & Cheng Cheng, Does Strengthening Self-Defense Law Deter Crime or Escalate Violence?: Evidence from Expansions to Castle Doctrine, 48, *The Journal of Human Resources* 821, 823 (2013).

³⁸ *Id.*

percent relative to states without such laws.³⁹ Hoekstra and Cheng conclude that SYG laws do not deter crime and state, “Our findings suggest that an informed debate over these laws will weigh the benefits of increased protections given to victims against the net increase in violent deaths that result.”⁴⁰

CONCLUSION

After Florida’s implementation of a Stand Your Ground law, more than 20 other states have followed in the steps of Florida.⁴¹ Many of which have used the Florida statute as a blueprint for their own SYG laws. These statutes have widened the scope of the traditional Castle Doctrine by removing the duty to retreat when one is outside their dwelling. Under the new laws, the use of lethal force is justified simply by a belief of fear for one’s safety.⁴² Thus, it has become difficult to determine whether an individual used deadly force justifiably under certain circumstances, due to the ambiguous nature of what can be perceived as reasonable. In a fatal incident where there are no eye witnesses, such as the Zimmerman case, a defendant must simply demonstrate in a belief that they were in imminent danger of great bodily injury or death. If the person is found to have used force as it is permitted in SYG law, then they receive immunity from any criminal or civil action against them.

It has become quite obvious that SYG laws have been misused. Such laws have been used successfully in cases where the defendant’s claims can be viewed by society as quite questionable. Based upon the recent research discussed in this paper, it seems that such laws do not lower crime rates as some proponents have argued. Also, these laws have had the alarming effect of increasing homicide rates in states with SYG laws by eight percent.⁴³ Such laws diminish the purpose of law enforcement agencies and give ordinary individuals the power to become the judge, jury, and executioner of another. Even though there has been a good deal of media attention focused on this topic, as well as public outcry, it does not seem that SYG laws will be repealed.⁴⁴ This can be attributed to the intense lobbying of gun activist groups as well as having a large portion of the public who believe that such laws are justifiable and needed. Most people are in support of having some sort of self-defense law, but it is a question of how far a person has the right to justifiably use deadly force against another. In order to settle the debate

³⁹ Id.

⁴⁰ Id.

⁴¹ Elizabeth Chuck, *Florida had first Stand Your Ground law, other states followed in ‘rapid succession’*, NBC News, (Jul. 18, 2013), http://usnews.nbcnews.com/_news/2013/07/18/19522874-florida-had-first-stand-your-ground-law-other-states-followed-in-rapid-succession?lite.

⁴² Fla. Stat. Ann. § 776.012 (West) 2005.

⁴³ Mark Hoekstra & Cheng Cheng, *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? : Evidence from Expansions to Castle Doctrine*, 48, *The Journal of Human Resources* 821, 849 (2013).

⁴⁴ Matthew DeLuca, *Majority of Americans support ‘Stand Your Ground’ laws: poll*, NBC News (Aug. 2, 2013), http://usnews.nbcnews.com/_news/2013/08/02/19831793-majority-of-americans-support-stand-your-ground-laws-poll?lite.

over SYG laws, it would be best if there is a discussion that would weigh the costs over the benefits of such laws. Even though repeal does not seem likely at this stage, discussions clarifying any misuse of such laws and perhaps amending them should be considered as a plausible alternative.