

BASF's Yolanda Jackson Gives Testimony to ABA on Stand Your Ground Laws

The Bar Association of San Francisco Analysis and Talking Points
American Bar Association Hearing on Stand Your Ground Laws

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August 9, 2013

STAND YOUR GROUND ANALYSIS

The Castle Doctrine (also known as a Castle Law or a Defense of Habitation Law) is an American legal doctrine that designates a person's abode (or, in some states, any legally-occupied place [e.g., a vehicle or workplace]) as a place in which that person has certain protections and immunities permitting him or her, in certain circumstances, to use force (up to and including deadly force) to defend against an intruder – free from legal responsibility/prosecution for the consequences of the force used.[1] Typically deadly force is considered justified, and a defense of justifiable homicide applicable, in cases “when the actor reasonably fears imminent peril of death or serious bodily harm to him or herself or another”.[1] The doctrine is not a defined law that can be invoked, but a set of principles which is incorporated in some form in the law of most states. Historically, the U.S. has mandated a duty to retreat, which requires a person facing immediate danger to retreat before resorting to violent self-defense. Essentially, stand your ground (SYG) revokes the duty to retreat. The logic behind these laws is that it will clarify and validate the use of force in self-defense, even if no attempt to retreat was made.

Because the Florida state Stand Your Ground law is what is driving our discussions at this juncture, let's use their laws (versus CA's SYG law) as an example:

FLORIDA LAW PRIOR TO THE ENACTMENT OF THE “STAND YOUR GROUND” LAW

Prior to Stand Your Ground, a person could use only non-deadly force to defend against the imminent use of unlawful non-deadly force. Deadly force was authorized only to defend against imminent deadly force or great bodily harm, or the commission of a forcible felony.

Unless the person was in his home or workplace, he had a “duty to retreat” prior to using deadly force. In one's home, the “Castle Doctrine” provided that the person had no duty to retreat prior to using deadly force against an intruder. However, he still needed the reasonable belief that deadly force was necessary to defend against deadly force, great bodily harm, or the commission of a forcible felony.

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FLORIDA LAW AFTER THE ENACTMENT OF THE "STAND YOUR GROUND" LAW

The "Stand Your Ground" Law introduced two (2) conclusive presumptions that favor a criminal defendant who is making a self-defense claim:

The presumption that the defendant had a reasonable fear that deadly force was necessary; and
The presumption that the other party intended to commit an unlawful act involving force or violence.

These two presumptions protect the defender from both civil and criminal prosecution for unlawful use of deadly or non-deadly force in self-defense. In addition, the defender/gun owner has no duty to retreat, regardless of where he is attacked, so long as he is in a place where he is lawfully entitled to be when the danger occurs.

In passing the "Stand Your Ground" Law, the Florida Legislature expressed its intent that no person should be "required to needlessly retreat in the face of intrusion or attack." The "Stand Your Ground" Law effectively expands the "Castle Doctrine" by expanding what is meant by the concept of one's "castle" to include any place where a person is lawfully entitled to be.

Florida's "Stand Your Ground" Law now provides immunity from prosecution, as opposed to an affirmative defense that you would need to assert in Trial (after being arrested and charged by the State of Florida).

Florida Statute 776.013 (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.

IMPACT OF FLORIDA'S "STAND YOUR GROUND"

Florida's "Stand Your Ground" law was enacted in 2005. In the six years prior to the enactment of "Stand Your Ground", Florida experienced an average of 34 justifiable homicides per year for a total of 206 deaths in six years. After its enactment, the annual death rate was approximately 85 justifiable homicides per year. For the first four years of its enactment, Florida had 333 justifiable homicides. There was an increase of 127 deaths in the first four years the law was enacted. The impact of this law has been a very strong statistical increase in the number of deaths. The increase in justifiable homicides increased

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2.8 times, nearly tripling the number of deaths.

Numerous states followed Florida in enacting their own "Stand Your Ground" laws. Some states adopted laws identical to Florida, while others adopted variations of the law.

WHY DO WE NEED TO HAVE THIS DISCUSSION?

Historically, the United States has mandated a duty to retreat, which requires a person facing immediate danger to retreat before resorting to violent self-defense. Essentially, SYG revokes the duty to retreat and instead allows the use of force without the initial attempt to retreat. In many states, SYG laws offer immunity from prosecution and in fact, a person could avoid trial all together under SYG. In some states, although law enforcement can investigate a situation, the law states that no arrest can be made unless it is proven that the use of force was unnecessary.

There are 26 states in the US that have either SYG laws or SYG doctrines. Since the Trayvon Martin case is what has sparked our need to have these discussions, it is important to note that the state of Florida was the first state to enact SYG laws in 2005.

Impact of these Stand Your Ground laws has sent the message as a society in our communities that someone who is armed potentially has the right to use those firearms even if there's a way for them to exit from a situation. Setting a more relaxed standard of self-defense encourages tragic mistakes, poor judgment, and perhaps even vigilantism.

Some of these states' laws have taken a historical legal doctrine that made it okay to use force to protect yourself in your space, like your home or car and now allows one to take this "respond with deadly force" reaction "to the streets".

In 2010, five years after the first SYG law was enacted, justifiable homicides by civilians using firearms doubled in the states with SYG laws, whereas, justifiable homicides fell or remained about the same in states without these laws.

The top law enforcement officer of this nation, Attorney General Eric Holder recently stated, "These laws senselessly expand the concept of self-defense, by allowing - and perhaps encouraging - violent situations to escalate in public..., such laws undermine public safety."

President Obama said it best, "it is time to examine some state and local laws to see if they encourage the kinds of altercations and tragedies that we saw in the Florida case, rather than diffuse potential altercations." Stand Your Ground Laws encourage violence by the use of deadly force which leads to a disproportionate impact on the African American

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Community.

WHAT ACTIONS CAN WE TAKE?

State-By-State we need to consider whether certain "Stand Your Ground" laws need to be repealed or modified/amended:

REVIEW IMPACT ALONG RACIAL LINES:

Gather data and have a candid discussion about the impact on certain races at various levels (prosecution through to verdicts to sentencing), , whether the laws are being applied equally across racial line, or put another way, whether these laws have a disparate impact on African American's or other racial minority groups. This includes reviewing anecdotal outcomes like the Marissa Alexander case (firing warning shots) in Jacksonville, Fl.

REVIEW IMPACT ON INCREASE IN HOMICIDES:

Gather data in order to assess whether these laws have led to an increase in "justifiable" homicides
Then:

Where appropriate, modify SYG laws to restrict or prohibit where individuals have the right to defend themselves. For example North Carolina prohibits the use of deadly force against law enforcement, bail bondsmen, and landlords. Wisconsin's version does not extend to public spaces. The Bar Association of San Francisco encourages a discussion on possible modifications which would severely restrict or prohibit where individuals have the right to defend themselves. Where appropriate, repeal SYG laws in those states where it is found that SYG laws have led to an 1) increase in homicides and/or where there is 2) disparate application of these laws across racial lines and where the state's laws cannot be effectively modified to remedy these two negative impacts.

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