



'STAND YOUR GROUND' LAW

FLORIDA'S STAND YOUR GROUND LAW: HOW TO GET AWAY WITH MURDER

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I. Delimitation of the Problem

On the afternoon of February 26, 2012, George Zimmerman (Zimmerman) drove through his neighborhood when he spotted a “suspicious black male” and decided to inform the authorities.¹ Seventeen-year-old Trayvon Martin (Martin) was walking home

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¹ *The Trayvon Martin Case: A Timeline*, THE WEEK (Jul. 17, 2012), <http://theweek.com/articles/476855/trayvon-martin-case-timeline>.

after purchasing a bag of Skittles at a nearby 7-Eleven.² Instructed by a police dispatcher, Zimmerman was to stay in his vehicle and avoid Martin.³ Zimmerman ignored the dispatcher's instructions and decided to approach Martin. Zimmerman consequently entered into an altercation with Martin, who was unarmed.⁴ Moments later, Zimmerman shot Martin, and claimed self-defense.⁵

A claim of self-defense under a Stand Your Ground theory enables an individual to claim immunity from prosecution and avoid trial completely.⁶ "Stand Your Ground" or "Shoot First" laws were

² Leo Benedictus, *How Skittles became a symbol of Trayvon Martin's innocence*, THE GUARDIAN (Jul. 15, 2013, 10:23 PM), <http://www.theguardian.com/world/shortcuts/2013/jul/15/skittles-trayvon-martin-zimmerman-acquittal> ("The Skittles especially, with their bright playground colors and 'Taste the Rainbow' slogan, have become a symbol of Martin's innocence.").

³ *Trayvon Martin Shooting Fast Facts*, CNN (Feb. 11, 2015, 2:38 PM), <http://www.cnn.com/2013/06/05/us/trayvon-martin-shooting-fast-facts/>.

⁴ Emily Bazelon, *What if Trayvon Martin Was the One Acting in Self-Defense?*, SLATE (Mar. 22, 2012), http://www.slate.com/articles/news_and_politics/crime/2012/03/florida_s_stand_your_ground_law_doesn_t_prohibit_t_hat_they_arrest_george_zimmerman_for_killing_trayvon_martin_.html.

⁵ Lizette Alvarez, *In Zimmerman Case, Self-Defense Was Hard to Topple*, N.Y. TIMES (Jul. 14, 2013), http://www.nytimes.com/2013/07/15/us/in-zimmerman-case-self-defense-was-hard-to-topple.html?_r=0.

⁷ Elizabeth Chuck, *Florida had First Stand Your Ground law, Other States Followed in 'Rapid Repercussion'*, NBC NEWS (Jul. 18, 2013), <http://www.nbcnews.com/news/other/florida-had-first-stand-your-ground-law-other-states-followed-f6C10672364>.

⁸ *See Do You Understand Stand Your Ground Laws? Are you sure?*, SECOND CALL DEFENSE, <http://www.secondcalldefense.org/self-defense-news/stand-your-ground-laws>; *see also* Firmin Debrabander, *How Gun Rights Harm the Rule of Law*, THE ATLANTIC (Apr. 1, 2015), <http://www.theatlantic.com/politics/archive/2015/04/how-gun-rights-harm-the-rule-of-law/389288/> (explaining how gun laws, specifically, Stand Your Ground laws, are meant as a form of legal protection in order to protect oneself while out in public).

⁶ Hussein et al., *How is Prosecutorial Immunity Pursued*, HUSSEIN & WEBBER, P.L., <http://www.husseinandwebber.com/case-work/criminal-defense-articles/floridas-stand-ground-law/> (last visited Apr. 16, 2017) (explaining that Florida's Stand Your Ground law can enable a defendant to invoke immunity from prosecution by demonstrating that his or her actions fell within the behavior acceptable under the statute). In order to be successful under a claim of self-defense, the "defendant admits the truth of the essential act, i.e. that he or she committed a homicide or other violence against a person, but justifies the act by

enacted to guard citizens when confronted with a situation where they fear their lives are in danger.⁷ Under Stand Your Ground laws, an individual may use deadly force to defend him or herself without first analyzing whether or not he or she could avoid the situation altogether.⁸ These laws eliminate a duty to retreat, which requires a person to walk away from a dangerous situation before relying on self-defense. The result is an easy manipulation of legislative intent in its creation of Stand Your Ground laws and the concept of self-defense.⁹ Stand Your Ground created a phenomenon amongst individuals, dividing those who are “trigger happy” and those who favor gun control legislation.¹⁰ The critical issue lies within the judicial interpretation of the law on a case-by-case basis. Was the

claiming that it was necessary to save him- or herself from death, great bodily harm, or other unlawful uses of force.” *Id.*

⁷ Robert Leider, *Understanding ‘Stand Your Ground’*, WALL STREET JOURNAL (Apr. 18, 2012, 6:58 PM), <http://www.wsj.com/articles/SB10001424052702304432704577350010609562008> (“Under Florida’s Stand Your Ground law, Mr. Zimmerman now must show that an average person in his circumstances would have viewed the Skittle-armed Martin as a mortal threat”).

⁸ Leider, *supra* note 7.

⁹ Larry Hannan, *Stand Your Ground Law Not Working as Intended Despite Changing Self-Defense in Florida*, FLORIDA TIMES UNION (Nov. 21, 2015), <http://jacksonville.com/news/crime/2015-11-21/story/stand-your-ground-law-not-working-intended-despite-changing-self-defense#> (“Records show that since the Stand Your Ground law was implemented, there have been [sixty-four] cases filed in Duval County in which defendants charged with felonies claimed self-defense and requested a Stand Your Ground hearing. Of those hearings, judges granted dismissals in just four. Eight defendants — twice as many — were acquitted after a trial. The other fifty-two reached plea deals, were convicted by juries, were committed to mental institutions or are still awaiting trial”). *Id.*

¹⁰ *Do the Pros of Stand Your Ground Laws Outweigh the Cons?*, DEBATE, <http://www.debate.org/opinions/do-the-pros-of-stand-your-ground-laws-outweigh-the-cons> (last visited Sept. 21, 2016) (explaining the pros and cons of implementing Stand Your Ground laws). The debate discussion is divided amongst those in favor and those against the law. In one aspect, we have those who believe “we must exercise our second amendment rights and use them when necessary.” DEBATE, *supra*. On the other hand, those against the law believe, “the Stand Your Ground law has already caused massive controversy in Florida and the United States because it is so vague that multiple criminals in recent years have gotten off of straight murder or manslaughter charges.” *Id.*

law created to justify unauthorized killings or was it made to assist those who are in perilous settings?

II. Conflicting Claims

In 2005, the National Rifle Association (NRA) spread the idea that self-defense in the United States (U.S.) was not as elaborate as it should be.¹¹ The organization advocated for an expansion of self-defense rights arguing that existing legislation did not cover all the circumstances in which an individual was entitled to exercise his or her right to use deadly force.¹² As its basis, the NRA used the 2004 case of a seventy-seven year old retired man, who was asleep with his wife and shot an intruder who broke into their hurricane-marred home.¹³ After shooting the intruder, the retired man waited

¹¹ See generally *A Brief History of the NRA*, NATIONAL RIFLE ASSOCIATION, <https://home.nra.org/about-the-nra/> (last visited Sept. 21, 2016) (“[The NRA] is “widely recognized today as a major political force and as America’s foremost defender of Second Amendment rights”). The NRA is an organization that prides itself in firearms education since its inception. *A Brief History of the NRA*, *supra*. The organization attributes their success to the commitment and service of the nearly five million members that have contributed to advocate for Second Amendment rights and other NRA related programs. *Id.*

¹² See Sebastian, PAGUN BLOG (Mar. 21, 2012), <http://www.pagunblog.com/2012/03/21/what-was-common-law-self-defense/> (“Under common law, it was legal to use deadly force against a person who was committing a felony.”). Not only was it legal, it was considered a civic duty to do so; see also Susan Ferriss, *NRA pushed ‘stand your ground’ laws across the nation*, PUBLIC INTEGRITY (Mar. 26, 2012), <https://www.publicintegrity.org/2012/03/26/8508/nra-pushed-stand-your-ground-laws-across-nation> (“Since Florida adopted its law in 2005, the NRA has aggressively pursued adoption of stand-your-ground laws elsewhere as part of a broader agenda to increase gun-carrying rights it believes are rightly due citizens under the 2nd Amendment”). To promote the passage of legislation, the NRA has contributed \$2.6 million to state political campaigns and committees since 2003. *Id.*

¹³ Ben Montgomery, *Florida ‘Stand Your Ground’ Law Was Born of 2004 Case, but story has been distorted*, TAMPA BAY TIMES (Apr. 14, 2012, 9:22 PM), <http://www.tampabay.com/news/publicsafety/floridas-stand-your-ground-law-was-born-of-2004-case-but-story-has-been/1225164> (emphasizing that the proponents of “Stand Your Ground” laws relied heavily on this case to promote the statute’s enactment).

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several months before state prosecutors determined the act was reasonable under the circumstances.¹⁴

The NRA allocates enough funding and supporters to continue to battle those who oppose such stringent views on self-defense and Stand Your Ground laws. Spending over \$250 million a year on advocating gun legislation, the organization spends more money than all other gun control advocacy groups combined.¹⁵ In lobbying efforts, the organization spends over \$3 million a year to influence all pro-gun legislation.¹⁶ The NRA also contributes to Political Action Committees (PACs) and other independent projects that further support the use of guns.¹⁷ After Zimmerman was acquitted, many criticized the judicial system's interpretation of Florida legislation.¹⁸ In response, the Executive Director of the NRA

¹⁴ See Sunnubian, *Florida Turns Their 'Stand Your Ground Law' into the Get Away with Murder Act*, AFRICAN AMERICA (Oct. 13, 2015, 4:39 PM), <http://www.africanamerica.org/topic/florida-turns-their-stand-your-ground-law-into-the-get-away-with-murder-act?reply=457716058525147541> (“The homeowner shot the intruder [and] then had to wait months — painful, anxiety-filled months in legal jeopardy — before prosecutors decided the two shots he fired were justified, that what he did was protect himself and his wife”); see also Ben Montgomery, *Florida 'Stand Your Ground' Law Was Born of 2004 Case, but Story Has Been Distorted*, TAMPA BAY TIMES (Apr. 14, 2012, 9:22 PM), <http://www.tampabay.com/news/publicsafety/floridas-stand-your-ground-law-was-born-of-2004-case-but-story-has-been/1225164> (emphasizing that the proponents of “Stand Your Ground” laws relied heavily on this case to promote the statute’s enactment).

¹⁵ *US gun control: What is the NRA and Why is it So Powerful?*, BBC NEWS (Jan. 8, 2016), <http://www.bbc.com/news/world-us-canada-35261394> (“Analysts point out that the NRA also yields considerable indirect influence via its highly politically engaged membership, many of whom will vote one way or another based on this single issue”).

¹⁶ *Id.*

¹⁷ *Id.* The article describes the overwhelming influence the NRA has on the federal government. The organization grades members of Congress from a scale of A through F. These ratings “can have a serious effect on poll numbers and even cost pro-gun control candidates a seat.” *Id.*

¹⁸ See *NRA Responds to Attacks on "Stand Your Ground" Laws*, NRA-ILA (Jul. 19, 2013), <https://www.nraila.org/articles/20130719/nra-responds-to-attacks-on-stand-your-ground-laws> (“Separate and apart from the case that has drawn the nation's attention, it's time to question laws that senselessly expand the concept of self-defense and show dangerous conflict in our neighborhoods”). *But see* E.J.

Chris Cox stated, “the Attorney General fails to understand that self-defense is not a concept, it’s a fundamental right.”¹⁹ He further stated that self-defense is not to blame, and fundamental rights are about the people, not political agendas.²⁰ The NRA maintains enormous impact on the concept of self-defense and Stand Your Ground legislation. With its political lobbying tactics and push for what the drafters of the Constitution intended for the U.S., the NRA rounded up millions of supporters.²¹

Also, Stand Your Ground laws earned a vast amount of support from the American Legislative Exchange Council (ALEC).²²

Dionne Jr., *Why the NRA pushes ‘Stand Your Ground’*, WASHINGTON POST (Apr. 15, 2012), https://www.washingtonpost.com/opinions/why-the-nra-pushes-stand-your-ground/2012/04/15/gIQAL458JT_story.html?utm_term=.7efcebb91ec2 (“What’s insidious about Stand Your Ground laws is that in every jurisdiction that has them, these statutes tilt the balance of power in any street encounter in favor of the person who has the gun”).

¹⁹ Dionne Jr., *supra* note 18. The NRA announced it would work relentlessly to protect self-defense laws and advocate in the states that do not respect this fundamental right.

²⁰ See Legal Information Institute, *Fundamental Right*, CORNELL UNIVERSITY LAW SCHOOL, https://www.law.cornell.edu/wex/fundamental_right (last visited Apr. 16, 2016), (“Fundamental rights are a group of rights that have been recognized by the Supreme Court as requiring a high degree of protection from government encroachment”); see also *Second Amendment*, NRA-ILA, <https://www.nraila.org/second-amendment/> (last visited Sept. 26, 2016) (“A well-regulated Militia, being necessary to the security of a free State, *the right of the people to keep and bear Arms*, shall not be infringed”) (emphasis added). The Founders of the United States declared that “we are defined by rights that we are born with, not given to us by the government.” *Id.*

²¹ Matthew Deluca, *Majority of Americans support ‘Stand Your Ground’ laws: poll*, NBC (Aug. 2, 2013), <http://www.nbcnews.com/news/other/majority-americans-support-stand-your-ground-laws-poll-f6C10825023> (detailing the Americans who support Stand Your Ground legislation). The poll depicted that just over half of the country was in favor of some form of self-defense legislation. Ironically, the poll revealed, “Stand Your Ground splits the country sharply along political, gender and racial lines” with a majority of white supporters.

²² See *About ALEC*, THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL (ALEC), <https://www.alec.org/about/> (last visited Sept. 27, 2016) (“The American Legislative Exchange Council is America’s largest nonpartisan, voluntary membership organization of state legislators dedicated to the principles of limited government, free markets and federalism”); see also John Nichols, *How ALEC Took Florida’s ‘License to Kill’ Law National*, THE NATION (Mar. 22, 2012),

The organization formed in 1973 by conservative activists, promoting “model legislation” adopted or recreated in some form by several states. Together with its ties to the NRA, ALEC indirectly encouraged Florida to adopt a statute on self-defense that is extremely similar to Section 1 of ALEC’s “Castle Doctrine Act.”²³ Additionally, ALEC assisted those states, which implemented some form of self-defense legislation to spread those self-defense ideals to states all across the country.²⁴ Together with the NRA, ALEC obtained \$39 million in lobbying efforts from gun manufacturers.²⁵

<https://www.thenation.com/article/how-alec-took-floridas-license-kill-law-national/> (explaining how ALEC has endorsed and supported the use of Stand Your Ground laws across the nation). The article further goes on to say, “in states across the country, with support from the gun lobby, ALEC’s model legislation—sometimes in mirror form, sometimes with modest alterations—has been enacted over the years since . . . Bush dismissed the warning by Florida state Senator Steve Geller that the ‘Stand Your Ground’ law ran the risk of encouraging Floridians to think that ‘you ought to be able to kill people that are walking toward you on the street because of this subjective belief that you’re worried that they may get in a fight with you.’” *Id.*

²³ *ALEC Castle Doctrine Exposed*, ALEC EXPOSED http://www.alecexposed.org/wiki/ALEC_Castle_Doctrine (last modified Feb. 14, 2014), (describing the influence ALEC had on Florida’s self-defense legislation stating, “the Florida ‘Stand Your Ground’ law became the template for ‘model’ legislation endorsed and promoted nationally by [ALEC]”).

²⁴ Adam Weinstein, *How the NRA and Its Allies Helped Spread a Radical Gun Law Nationwide*, MOTHER JONES (Jun. 7, 2012), <http://www.motherjones.com/politics/2012/06/nra-alec-stand-your-ground> (“We definitely brought that bill forward to Alec, said Baxley, a member of the group”). *See generally* Strassman, *infra* note 41.

²⁵ *Id.* *But see* Ashley Lopez, *ALEC, Backer of Stand-Your-Ground Laws, Faces Funding Issues After Trayvon Martin Shooting*, FLORIDA CENTER FOR INVESTIGATIVE REPORTING (FCIR) (Dec. 6, 2013), <http://fcir.org/2013/12/06/alec-backer-of-stand-your-ground-laws-faces-funding-issues-after-trayvon-martin-shooting/> (“Many companies distanced themselves last year from ALEC once news circulated that the group was connected to Florida’s Stand Your Ground Law, which got a lot of attention following the shooting of Trayvon Martin by George Zimmerman”). The article demonstrates the amount of corporations that have decided to stop their funding and contributions toward ALEC since the infamous shooting. *Id.* Additionally, ALEC has lost roughly 400 state legislators from its membership over the course of the last two years, including “more than [sixty] corporations.” *Id.*

ALEC's ties to the passage of Stand Your Ground laws proves money holds major influence in self-defense laws.

Although many support an expansive self-defense approach, there are others who are more conservative about the issue. These individuals—who refer to themselves as gun-control advocates—believe that violence is not always the answer. One of the most popular organizations that advocates against the NRA is the Coalition to Stop Gun Violence (CSGV).²⁶ CSGV's mission is political advocacy through the use of campaigns across social media and televised platforms. CSGV seeks to build relationships with political figures to facilitate the passage of more stringent self-defense laws.²⁷ The organization acquires its reinforcement from the victims and survivors of gun violence situations.²⁸ CSGV targets citizens across the nation through the use of statistical and empirical data demonstrating the negative consequences of gun violence.²⁹ The message of CSGV is to promote the importance of human life and demonstrate to others that violence is not always the answer.³⁰ CSGV reiterated the condemnation of taking away human life as has been demonstrated since the Biblical era.³¹ The organization believes that the founding fathers of the U.S. created a democratic government whose purpose was, “to reject the idea that ‘guys with the guns make the rules.’”³² Kill at Will laws—as referred to by the

²⁶ *About Us*, COALITION TO STOP GUN VIOLENCE (CSGV), <http://csgv.org/about-us/> (last visited Sept. 27, 2016) (“The Coalition to Stop Gun Violence (CSGV) is a 501(c)(4) organization that was founded in 1974 [and] seeks to secure freedom from gun violence through research, strategic engagement and effective policy advocacy”).

²⁷ *Id.*

²⁸ *Id.* The organization has acquired the support of many political figures. As Senator Chris Murphy stated, “the Coalition to Stop Gun Violence has led the way in exposing the dangerous insurrectionist ideology promoted by the NRA and others in the pro-gun movement.” *Id.*

²⁹ *Main Page*, CSGV, <http://www.csgv.org/> (last visited Sept. 27, 2016) (“Gun violence is the number one killer of African Americans [in the U.S.] ages 15-34”). Additionally, “[forty percent] of gun sales involve no background check.”

³⁰ *Id.*

³¹ *Id.*

³² *CSGV Statement on Verdict in Dunn Trial*, CSGV (Feb. 16, 2014), <http://csgv.org/releases/2014/csgv-statement-verdict-dunn-trial/> (“In order to

organization—are considered to be the creation of a new idea influenced by gun lobbyists that are “morally acceptable.”³³

III. The Law: Past Trends in Decisions and Conditioning Factors

The NRA and its supporters established the idea of Stand Your Ground based on the ancient Castle Doctrine.³⁴ The organization reiterated the importance of protecting one’s home, which is one of the oldest forms of self-defense recognized by British and American law.³⁵ Florida’s Castle Doctrine allows an individual to use deadly force against an intruder who enters one’s home and eliminates the duty to retreat.³⁶ Further, the law gives immunity to those who invoke their right under the statute.³⁷

function properly, an organized government *must* be able to offer redress when life is taken needlessly”) (internal citations omitted).

³³ *Id.* It allows people to take human life when there is no need too. *Id.* It encourages people that have debatable judgment with “little or no training to use lethal force with few, if any consequences.” *Id.*

³⁴ See *What is Castle Doctrine?*, FREE ADVICE, http://criminal-law.freeadvice.com/criminal-law/violent_crimes/castle-doctrine.htm (last visited Apr. 16, 2017) (“Under the common law, a person could use deadly force to defend their home, but only after using every reasonable means to avoid the danger”). See generally *Florida Gun Law: The Castle Doctrine*, HOME SAFETY, <http://www.homesafetyacademy.com/us-lawshield/florida-gun-law-the-castle-doctrine/> (last visited Apr. 7, 2017) (“For a man’s house is his castle, and each man’s home is his safest refuge – Sir Edward Coke 1628”).

³⁵ Hendrik DeBoer & Mark Randall, *The Castle Doctrine and Stand-Your-Ground Law*, CONNECTICUT GENERAL ASSEMBLY, (Apr. 24, 2012), <https://www.cga.ct.gov/2012/rpt/2012-R-0172.htm>. (“The Castle Doctrine is a common law doctrine that designates a person’s abode (or, in some states, any place legally occupied, such as a car or place of work) as a place in which the person has certain protections and immunities and allows such a person in certain circumstances, to attack an intruder instead of retreating”). Normally, deadly force is considered a justifiable homicide in cases where the individual reasonably feared death or serious bodily harm to him or herself or another. *Id.* The doctrine is incorporated into the self-defense laws of forty-six states. *Id.*

³⁶ See *Florida “Castle Doctrine” Protects the Innocent*, GUN LAWS, <http://www.gunlaws.com/FloridaCastleDoctrine.htm> (last visited Apr. 7, 2017); The law provides for those individuals using force under this section to avoid prosecution for the use of such deadly force. The Florida provision does not

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As a result, in 2005, the Florida Senate approved its Stand Your Ground law by a 39-0 vote.³⁸ The Florida House also approved the Stand Your Ground law by a 94-20 vote.³⁹ On October 1, 2005, Governor Jeb Bush gave his official stamp of approval.⁴⁰ Since the enactment of Florida's Stand Your Ground law in 2005, thirty-three states have passed similar laws, with Florida's being the most controversial.⁴¹ In the two years following Governor Bush's approval

require residents to retreat before using deadly force—whether it be with a gun, knife or baseball bat—against a home intruder, an idea that originates from the English common law that an individual's home is their castle. *See also* Ashley Portero, *Florida's 'Stand Your Ground' Law: 5 Things to Know*, *IB TIMES* (Mar. 21, 2012, 4:53 PM), <http://www.ibtimes.com/floridas-stand-your-ground-law-5-things-know-428362>.

³⁷ *See* FLA. STAT. § 776.013 (2011). A person is presumed to have had a reasonable fear of death or great bodily injury to him or herself or another when threatening to use or actually using defensive force. *Id.*

³⁸ Sean Sullivan, *Everything you need to know about 'stand your ground' laws*, *WASHINGTON POST* (Jul. 15, 2003, 10:48 AM), <http://www.washingtonpost.com/news/the-fix/wp/2013/07/15/everything-you-need-to-know-about-stand-your-ground-laws/>.

³⁹ *Id.*

⁴⁰ *See* Elizabeth Chuck, *Florida had first Stand Your Ground law, other states following in 'rapid succession'*, *NBC NEWS* (Jul. 18, 2013, 10:03 a.m.), <http://www.nbcnews.com/news/other/florida-had-first-stand-your-ground-law-other-states-followed-f6C10672364> (elaborating on how Florida became the first state to enact a Stand Your Ground law) Since then, more than 200 cases in Florida have been dismissed or defendants have been acquitted where they invoke the "Stand Your Ground" statute as protection. *Id.*; *see also* FLA. STAT. § 776.013 (2011).

⁴¹ *See These Are the States That Have 'Stand Your Ground' Laws*, *TAKEPART* (May 28, 2015), <http://www.takepart.com/article/2015/05/27/these-are-states-have-stand-your-ground-laws>; *see also* Amel Ahmed, *'Stand Your Ground' Laws – State by State*, *AL JAZEERA AMERICA*, <http://america.aljazeera.com/articles/multimedia/stand-your-groundlawsmap.htm>. *See generally* Mark Strassman, *Florida Looks to Expand Controversial Stand Your Ground Law*, *CBS NEWS* (Mar. 10, 2014, 7:37 PM), <http://www.cbsnews.com/news/florida-looks-to-expand-controversial-stand-your-ground-law/>. The thirty states are: Alaska, Alabama, Arizona, Oregon, Washington, Idaho, Utah, Montana, Wyoming, Kansas, Oklahoma, Texas, Louisiana, Mississippi, Tennessee, Iowa, Indiana, Wisconsin, Michigan, Illinois, Missouri, West Virginia, South Carolina, Georgia, Pennsylvania, Ohio, Kentucky, Massachusetts, North Dakota, South Dakota, Rhode Island, and Florida. *SYG States, supra*. Of these thirty-three states, ten states have introduced bills to repeal

of the law, the number of gun-related homicides in Florida increased by more than 200%.⁴² Furthermore, the American Bar Association⁴³ National Task Force on Stand Your Ground Laws recently conducted a study to determine the impact the laws have had on “public safety, individual liberties, and the criminal justice system.”⁴⁴ The report publicized that Stand Your Ground laws, although varied by state, have a negative effect on law enforcement and have unsuccessfully prevented crime.⁴⁵ Consequently, this led to a wave of criticism from

or scale back on the impact of “Stand Your Ground,” while thirteen other states have pending legislation to expand on “Stand Your Ground” laws. Ahmed, *supra*. As Trayvon Martin's mother testified before the Florida Senate committee, hundreds of protesters outside rallied in support of getting rid of the law completely. Strassman, *supra*. After the George Zimmerman case, Florida has received an excess amount of publicity with regards on how to cut back on the protections allowed by the Stand Your Ground law. Strassman, *supra*.

⁴² Ben Jealous, *Pain of stand your ground laws is Jeb Bush's sad legacy*, SUN SENTINEL (Jul. 29, 2015, 4:32 PM), <http://www.sun-sentinel.com/opinion/columnists/fl-bjcol-oped0730-20150729-story.html> (analyzing the impact Florida's stand your ground has had on the state as well as other states that have enacted similar laws).

⁴³ *About the American Bar Association*, AMERICAN BAR ASSOCIATION (ABA), http://www.americanbar.org/about_the_aba.html (last visited Oct. 20, 2015). The American Bar Association is one of the largest voluntary professional organizations in the world, with almost 400,000 members and over 3,500 entities. *Id.* It is dedicated to serving our members through the hard work of our dedicated attorneys, striving to improve the legal profession, removing the bias found around the world and enhancing diversity, and making sure justice is served throughout the United States and around the world. *Id.*

⁴⁴ See Amel Ahmed, *Stand Your Ground States See Increase in Homicides*, AL JAZEERA AMERICA, <http://america.aljazeera.com/blogs/scrutineer/2014/8/12/stand-your-groundstatesseeincreaseinhomicides.html>. See generally *ABA National Task Force on Stand Your Ground Laws to Hold Public Hearing in Miami*, ABA (Oct. 11, 2013), http://www.americanbar.org/news/abanews/aba-news-archives/2013/10/aba_national_taskfo.htm (“The ABA National Task Force on Stand Your Ground Laws is hailed as the prevailing independent leader on the legal analysis and social critique of the impact of state Stand Your Ground laws”). The task force is uniquely qualified to analyze the impact of Stand Your Ground laws and the resulting effects of the expansion of justified use of deadly force on the criminal justice system and individual liberties, particularly those of systemically vulnerable constituencies. *ABA National Task Force, supra*.

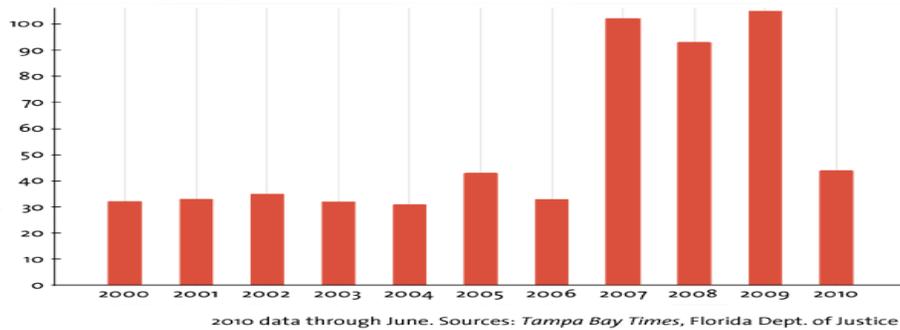
⁴⁵ See *ABA Task Force Report Indicates Failure of Stand Your Ground Laws*, ABA (Aug. 9, 2014), <http://www.americanbar.org/news/abanews/aba-news->

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individuals all around the U.S. questioning whether the purpose of the law outweighs the sacrifice of human life.⁴⁶

Ask Questions Later

Reports of justified homicides shot up after Florida passed its 2005 "stand your ground" law.



Since the passage of this law, justifiable homicides increased in Florida by 53%.⁴⁷ Contrary to the Florida Legislature's intent to minimize violence, justifiable homicides decreased by 5% in states

archives/2014/08/aba_task_force_repor.html (explaining the ABA's National Task Force on Stand Your Ground Laws investigation of Stand Your Ground laws across the United States). Among their findings, the NTF discovered that based on empirical studies, states with Stand Your Ground laws experienced an increase in homicides since the statute's enactment. *Id.* Further, they noted multiple state have attempted to repeal or amend Stand Your Ground laws because the application of the law is "unpredictable, uneven, and results in racial disparities." *Id.* Finally, the NTF noted that "an individual's right to self-defense was sufficiently protected prior to Stand Your Ground laws and victim's rights were undermined in states with statutory immunity prosecution and civil suits related to Stand Your Ground cases. *Id.* See generally Ahmed, *supra* note 41 (elaborating on the findings discovered by the National Task Force in their investigation of Stand Your Ground laws).

⁴⁶ Mark Hoekstra, *The deadly consequences of 'Stand Your Ground' laws*, REUTERS, (February 13, 2004), <http://blogs.reuters.com/great-debate/2014/02/13/the-deadly-consequences-of-stand-your-ground-laws/> (analyzing the negative impact Stand Your Ground laws have had on those states that have chosen to implement it). Whatever benefits Stand Your Ground has is limited to the actual victims of the crime "who may now be more willing or able to defend themselves" or may have lower criminal and civil costs for choosing to defend themselves. *Id.*

⁴⁷ See Mayors Against Illegal Guns, *'Stand Your Ground' Laws and Their Effect on Violent Crime and the Criminal Justice System*, EVERY TOWN (Sept. 18, 2003), http://everytownresearch.org/reports/shoot-first/#foot_note_anchor_14 (demonstrating the increase in justifiable homicides).

that have not enacted a Stand Your Ground law.⁴⁸ Shockingly, Florida's justifiable homicide rate increased well over 200%.⁴⁹ In Florida alone, twenty-six children and teenagers were killed as a result of a Stand Your Ground invocation.⁵⁰ Further, it has been argued by those opposing Stand Your Ground legislation, that the law promotes vigilantism, thereby contributing to at least 134 fatal incidents.⁵¹

The concept of Stand Your Ground negatively impacted states that have chosen to implement the law.⁵² Why do people

⁴⁸ *Id.* (“In September 2013, Mayors Against Illegal Guns released Shoot First, a comprehensive review of Stand Your Ground laws and how they affect public safety and the criminal justice system”). The report explains how Stand Your Ground statutes have expanded the circumstances in which people are allowed to use deadly force, and have created legal hurdles that make it harder to hold shooters accountable. *Id.*

⁴⁹ *Id.*

⁵⁰ See Nicole Flatow & Rebecca Leber, 5 *Disturbing Facts About the State of Stand Your Ground On the Second Anniversary of Trayvon's Death*, THINK PROGRESS (Feb. 26, 2014, 2:45 PM), <http://thinkprogress.org/justice/2014/02/26/3332391/trayvon-martin-years/> (explaining that although a defendant may not be successfully acquitted under Stand Your Ground, defense attorneys encourage their clients to invoke the immunity anyway). The law has been invoked in the killing of a child as young as nine years old. *Id.*

⁵¹ See Flatow & Leber, *supra* note 50 and accompanying text (“Affecting the calculus of law enforcement on an arrest, factoring in jury decisions, or granting defendants immunity from trial”). See generally *Vigilantism (Spiderman, Superman, Batman)*, CRIME MUSEUM, <http://www.crimemuseum.org/crime-library/vigilante> (last visited Apr. 16, 2017) (“Vigilantism is the act of taking the law into one's own hands and attempting to enact justice according to one's own understanding of right and wrong”). Vigilantism is also referred to as “an action taken by a voluntary association of persons who organize themselves for the purpose of protecting a common interest, such as liberty, property, or personal security.” *Vigilantism, supra*.

⁵² See generally Gregory Conterio, *The Contrarians –Stand Your Ground*, BILL TRACK 50, <http://www.billtrack50.com/blog/contrarians/the-contrarians-stand-your-ground/> (last visited Nov. 10, 2015, 3:59 PM), (“Stand Your Ground seems to be an attempt to codify an Old West justice system based on shoot-first vigilantism”); see also Strassman, *supra* note 41. They open a can of worms to situations in which two people who are each going about their business, but have “overly heightened reasonable suspicions of the other, can both legally kill each other.” Conterio, *supra*. Law enforcement should be left up to the police and not to ordinary citizens. Conterio, *supra*.

continue to support it?⁵³ In 2013, after the controversial Zimmerman case was decided, *Viewpoint Florida* conducted a poll where registered voters were asked about their opinions concerning the notorious Stand Your Ground law.⁵⁴ To its surprise, over half of the voters who participated in the poll believed that the jury's "not guilty" verdict in the Zimmerman trial was, in fact, the correct verdict.⁵⁵ Additionally, 63% of the voters acknowledged because Zimmerman was acquitted at his trial, the prosecution should not be permitted to charge him for a federal hate crime.⁵⁶

Interestingly enough, voters were asked to pick between one of three statements which best depicted their opinion of Zimmerman's conduct leading up to the events of the shooting of Martin.⁵⁷ Over half the voters believed that Zimmerman acted in self-defense; 27% of the voters felt that Zimmerman's actions were simply a racially motivated killing; and thirteen percent felt that Zimmerman committed murder when he shot Martin notwithstanding any racial motivation.⁵⁸ As a final point, the poll provided voters with one of three options to choose from regarding their perspective

⁵³ *The Florida Sheriffs Association Supports the Stand Your Ground Law*, FL SHERIFFS, <http://www.flsheriffs.org/newsroom/entry/the-florida-sheriffs-association-supports-the-stand-your-ground-law> (last visited Sept. 30, 2015), (demonstrating support by the Florida Sheriffs on the Stand Your Ground statute the way it is written in its present form). The Florida Sheriff's department goes on to say that the judicial system consists of multiple "checks and balances" that implement a fair and equitable application of the law. *Id.*

⁵⁴ See *Majority of Floridians accept Zimmerman Trial Verdict, Support "Stand Your Ground" Law*, VIEWPOINT FLORIDA, http://viewpointflorida.org/index.php/site/article/majority_of_floridians_accept_zimmerman_trial_verdict_support_stand_yo/ (last visited Apr. 16, 2017) (demonstrating the difference of opinion among Florida registered voters after the Zimmerman trial concluded). See *generally About*, VIEWPOINT FLORIDA, http://viewpointflorida.org/index.php/site/article/majority_of_floridians_accept_zimmerman_trial_verdict_support_stand_yo/ (last visited Apr. 16, 2017) ("Viewpoint Florida is a joint public opinion research effort with Data Targeting Inc. and Public Concepts, LLC using state-of-the-art polling methods"). Viewpoint Florida "studies and publishes opinion data on current events important to all Floridians." *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ VIEWPOINT FLORIDA, *supra* note 54.

⁵⁸ *Id.*

on Florida's Stand Your Ground law.⁵⁹ Half the voters admitted to the law being fine the way it is currently worded, while 1/3 of the voters thought the law needed to be changed or restricted in some way, and 13% of voters agreed the law should be repealed completely.⁶⁰ This vast difference of opinion demonstrates that although Florida voters want to see some type of change in the state's Stand Your Ground law, the legislature repeatedly turns down proposals to either amend or repeal the law in its entirety.⁶¹

A. *Warning Shot Provision*

To address the issues protestors raised, the Florida Legislature passed what it believes will solve the problems associated with the Stand Your Ground law.⁶² The new law, known

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See Greg Allen, *Florida Lawmakers Turn Deaf Ear Toward 'Stand Your Ground' Protestors*, NPR (Mar. 11, 2014, 5:00 AM), <http://www.npr.org/2014/03/11/288883467/fla-lawmakers-turn-deaf-ear-toward-stand-your-ground-protestors> (explaining how hundreds of people stood outside the Capitol building in Tallahassee to protest the law but were readily ignored by the Florida Legislature). The rally, the largest one seen in recent months, came after a verdict was rendered in favor of George Zimmerman. *Id.* See also Daniela Silva, *Florida Panel Rejects Bill to Repeal 'Stand Your Ground'*, NBC NEWS (Nov. 7, 2013, 10:11 PM), <http://www.nbcnews.com/news/other/florida-panel-rejects-bill-repeal-stand-your-ground-f8C11558116> ("The bill as proposed would have repealed the statute allowing individuals the right to 'stand their ground' and use deadly force against another instead of retreating under fear of death or great bodily harm"). The hearing was followed by several protests, mainly young college students, who held a thirty-one-day sit-in at the Capitol building hoping to get the attention of Governor Rick Scott who did not pay much attention to them. Silva, *supra*.

⁶² Andrew Branca, *Florida "Warning Shot" Bill Passes Senate, Heads to Governor's Desk*, LEGAL INSURRECTION (April 3, 2014, 6:00 PM), <http://legalinsurrection.com/2014/04/florida-warning-shot-bill-passes-senate-heads-to-governors-desk/>. But see Bill Rufty, *Combee's Warning Shot Bill Advancing*, THE LEDGER (Feb. 23, 2014, 9:11 PM), <http://www.theledger.com/article/20140223/COLUMNISTS0502/140229680> (explaining that Combee has consistently expressed it was never his intention to allow people to use more guns, but to correct the problem he sees in the "existing

as the warning shot, allows people to avoid criminal prosecution if they fire a cautionary shot in order to avoid a life-threatening situation.⁶³ For example, Marissa Alexander, a woman who was originally sentenced to twenty years in prison after firing a shot near her husband who, she alleged, physically abused her, triggered the warning shot rule.⁶⁴ During her trial, Alexander claimed she fired in self-defense, but the judge refused her invocation of Stand Your Ground.⁶⁵

Consequently, the warning shot rule led to an even more expansive approach of the existing Stand Your Ground law instead of the intended goal: a reduction.⁶⁶ The law, which became effective immediately upon signature by Governor Rick Scott, will apply retroactively and allow firearm offenders, who are currently

10-20-Life Law in the use of a firearm”, which includes firing a firearm into the air).

⁶³ See generally Michael Van Sickler, *Does ‘Warning Shot’ Bill Weaken Florida’s ‘Stand Your Ground’ Law?* TAMPA BAY TIMES (May 20, 2014, 6:41 PM), <http://www.tampabay.com/news/politics/stateroundup/does-warning-shot-bill-weaken-floridas-stand-your-ground-law/2180639> (elaborating what HB 89 says for those who use deadly force within their home or vehicle); *Id.*

⁶⁴ See Kim Segal, *Florida Woman in Warning-Shot Case Released*, CNN (Dec. 1, 2013, 11:49 AM) (explaining that the appellate court overturned the defendant’s conviction and ordered a retrial where this newly enacted defense could be used by the defendant); see also Leonard Pitts Jr., *Marissa Alexander’s out of jail, but not yet free*, SEATTLE TIMES (Feb. 1, 2015, 3:03 AM), http://old.seattletimes.com/html/opinion/2025586816_leonardpittscolumnfloridastandyourground01.xml.html (detailing the events that led up to Marissa Alexander’s trial and discussing the injustice of the criminal justice system prior to this case).

⁶⁵ Irin Carmon, *Marissa Alexander Denied New Stand Your Ground Hearing*, MSNBC (Jan. 27, 2015, 11:52 PM), <http://www.msnbc.com/msnbc/marissa-alexander-denied-new-stand-your-ground-hearing>. Alexander was denied immunity at her Stand Your Ground hearing, where the judge found “insufficient evidence that Alexander reasonably believed deadly force was needed to prevent death or great bodily harm to herself.” *Id.* She was later convicted of aggravated assault and sentenced to twenty years. *Id.*

⁶⁶ Gillian Mohny, *Florida extends ‘Stand Your Ground’ to Include Warning Shots*, ABC NEWS (Jun. 21, 2014, 5:09 PM), <http://abcnews.go.com/US/florida-extends-stand-ground-include-warning-shots/story?id=24244906> (elaborating on the legislature’s goal of expanding those Stand Your Ground provisions to include firing a warning shot which is yet another tool for people to use in claiming self-defense).

incarcerated, to drastically reduce their sentences from the existing mandatory minimum.⁶⁷ Unfortunately, those concerned individuals who voiced their opinions following the Zimmerman verdict were presented with an overly expansive law that not only protects more felony offenders, but also reduces the sentences of those already behind bars.⁶⁸ As a final point, individuals are also worried about the dangers that will be seen with the Warning Shot rule.⁶⁹ The idea of being able to fire a bullet in the air in order to avoid prosecution seems a bit problematic.⁷⁰ Individuals fear that shots fired in the air will endanger the lives of innocent bystanders, including children, because there are no restrictions on when and where an individual is allowed to use the warning shot provision.⁷¹

⁶⁷ See Brett Snider, *In Florida, 'Stand Your Ground' Now Applies to Warning Shots Too*, FIND LAW, (Jun. 24, 2014, 12:01 PM) <http://blogs.findlaw.com/blotter/2014/06/in-fla-stand-your-ground-now-applies-to-warning-shots-too.html> (discussing how the warning shot expansion substantially reduces those convictions originally given under Florida's 10-20-Life sentencing requirements). *But see* Michael Van Sickler, *Florida Senate OK's 'warning shot' bill*, MIAMI HERALD (Apr. 3, 2014), <http://www.miamiherald.com/news/state/article1962322.html> (“The so-called ‘warning shot’ bill is backed heavily by the NRA and other gun groups like Florida Carry, who see it as a way to better protect members facing prosecution or who had been convicted for aggravated assault for firing guns in cases that didn’t involve injuries”).

⁶⁸ See Snider, *supra* note 67; *see also* Andrew Branca, *Gawker analyzes Florida's "Warning Shot" bill, implosion follows*, LEGAL INSURRECTION (Jan. 18, 2014, 3:24 PM), <http://legalinsurrection.com/2014/01/gawkers-warning-shot-post-suffers-error-induced-implosion/> (explaining how the warning shot bill replaces each reference of Florida's self-defense statute to “use of force” with “use or threatened use of force”).

⁶⁹ Bob Owens, *Florida's warning shot bill may be one of the most dangerous gun laws ever proposed*, BEARING ARMS, (Dec. 20, 2013, 7:34 AM), <http://bearingarms.com/floridas-warning-shot-bill-may-be-one-of-the-most-dangerous-gun-laws-ever-proposed/> (“A small dense projectile fired on a ballistic trajectory will continue in motion until it impacts violently with something significant enough to absorb its energy, whether that ‘something’ is the backstop on a range, the wall of a house, or the body of another living thing”).

⁷⁰ *Id.* (explaining that warning shots are universally a bad idea because the attacker is shown that the victim is reluctant to take a human life, which can actually “embolden” an attacker).

⁷¹ *Id.* (explaining that warning shots will be fired either into the air where the bullet will return to the earth and possibly strike an innocent individual, into the

B. Race and the Environment

Another issue that seems to be connected with Stand Your Ground laws is racial discrimination. African Americans make up 17% of the population in Florida.⁷² However, “they account for thirty-four percent of the defendants invoking the ‘stand your ground’ defense.”⁷³ The Tampa Bay Tribune conducted a meaningful study where it compiled 119 cases in Florida in which individuals were charged with murder and relied on Stand Your Ground to avoid criminal prosecution.⁷⁴ The study revealed that sixty-seven percent of those individuals who killed an African American walked away free of any penalty.⁷⁵ Whereas, only 57% of those who killed a Caucasian avoided any filed charges.⁷⁶

A subsequent study conducted by anti-gun coalitions revealed that self-defense cases were more likely to be successful if the victim

ground where the bullet can ricochet off the pavement and cause serious injury or into walls, floors, and ceilings, etc. possibly causing bodily harm to individuals occupying these areas).

⁷² *Black Population in Florida by Metropolitan Areas*, BLACK DEMOGRAPHICS, <http://blackdemographics.com/states/florida/> (last visited Feb. 14, 2014, 3:43 PM), (demonstrating data acquired from a 2010 Florida census).

⁷³ John Lott, *Right to Stand Your Ground Transcends Race and Politics*, ORLANDO SENTINEL (Oct. 16, 2014), <http://www.orlandosentinel.com/opinion/os-ed-stand-your-ground-hearings-101614-20141015-story.html> (explaining the statistics gathered by the study and the effects the law has had on the state of Florida).

⁷⁴ *Id.*

⁷⁵ Lott, *supra* note 73.

⁷⁶ *Id.* See also Lisa Wade, *Stand Your Ground Increases Racial Bias in “Justifiable Homicide” Trials*, SOCIETY PAGES (Dec. 30, 2013), <https://thesocietypages.org/socimages/2013/12/30/stand-your-ground-laws-increases-racial-bias-in-justifiable-homicide-trials/> (“We are already biased in favor of the white defendant and against the black victim. Stand your ground laws give jurors more leeway to give defendants the benefit of the doubt. This increase even further the chances that a white-on-black homicide will be considered justifiable because jurors will likely give that benefit of the doubt to certain kinds of defendants and not others. Stand your ground may or may not be a good law in theory but, in practice, it increases racial bias in legal outcomes”). Wade, *supra*.

was an African American.⁷⁷ Out of those cases, 73% of those defendants who killed an African American did not face any jail time whatsoever in comparison to fifty-nine percent of those defendants who killed a Caucasian.⁷⁸ The study revealed further information pertaining to justifiable homicides. When the killer is a Caucasian and the victim is an African American, “the justifiable homicide rate is thirty-four percent, compared to a rate of 3% when the shooter is African American and the victim is white.”⁷⁹

Many critics of the law have begun to wonder if the law subconsciously discriminates against African Americans.⁸⁰ The Tampa Bay Times also conducted an impactful study in where it compared two cases side-by-side that were extremely similar, the only difference: race. In the first case, a female shot her white boyfriend who allegedly tried to sexually assault her.⁸¹ The woman subsequently put a knife in his neck and was imprisoned for ten years.⁸² The other case is of a female who was in a similar predicament.⁸³ Her boyfriend allegedly tried to choke her and so she shot him.⁸⁴ This female received no incarceration time and was

⁷⁷ Sarah Iverson, *Beyond ‘Stand Your Ground’: Florida’s Other Racial Profiling Practices*, AMERICAN PROGRESS (Oct. 11, 2012, 12:02 PM), <https://www.americanprogress.org/issues/race/reports/2013/10/11/76860/beyond-stand-your-ground-floridas-other-racial-profiling-practices/>.

⁷⁸ Iverson, *supra* note 77.

⁷⁹ *Id.* (detailing the idea that “homicide rates have increased by [eight] percent in states with Stand Your Ground laws—evidence that the laws encourage the escalation of violence in otherwise non-deadly situations”).

⁸⁰ Patrik Jonsson, *Racial Bias and ‘Stand Your Ground’ Laws: what the data show*, CHRISTIAN SCIENCE MONITOR (Aug. 6, 2013), <http://www.csmonitor.com/USA/Justice/2013/0806/Racial-bias-and-stand-your-ground-laws-what-the-data-show> (“Such findings ‘show that it’s just harder for black defendants to assert stand-your-ground defense if the victim is white, and easier for whites to raise a stand-your-ground defense if the victims are black’”) (internal citations omitted).

⁸¹ Susan Taylor Martin, Kris Hundley, & Connie Humburg, *Race Plays Complex Role in Florida’s ‘Stand Your Ground’ Law*, TAMPA BAY TIMES (Jun. 2, 2012, 12:00 PM), <http://www.tampabay.com/news/courts/criminal/race-plays-complex-role-in-floridas-stand-your-ground-law/1233152> (discussing the effects of racial discrimination and the criminal justice system).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

allowed to walk free.⁸⁵ Although it may very well be that these two cases were a minor coincidence, they fall amongst the thousands of “coincidental” cases that encounter a Stand Your Ground issue. As Representative Corinne Brown put it, “I have spoken to countless lawyers and they have yet to discover any cases in Florida where an African-American was able to successfully use the 'stand your ground' law defense in a hearing.”⁸⁶ These cases add yet another layer of problems associated with the law. Because of cases like these and hundreds of others, thousands of Americans gathered in protests on the streets.⁸⁷ Many fear that without some regulation, the law will continue to do more harm than good.⁸⁸

Notwithstanding the many ambiguities following Florida’s Stand Your Ground law, one thing is certain: the law is poorly written as it exists today.⁸⁹ Invocation of the law’s protection

⁸⁵ Martin et al., *supra* note 81. The difference in decision may not have anything to do with racial discrimination amongst the victims. *Id.* However, these cases demonstrate the harsh reality of “Florida’s controversial ‘Stand Your Ground’ laws.”

⁸⁶ Martin et al., *supra* note 81.

⁸⁷ CNN Wires, *Hundreds Protest Florida’s Stand Your Ground Law in Tallahassee*, FOX2NOW (Mar. 10, 2014, 5:09 PM), <http://fox2now.com/2014/03/10/hundreds-protest-floridas-stand-your-ground-law-in-tallahassee/> (explaining the rally consisted of more than 2,000 Americans who decided to protest against Florida’s infamous Stand Your Ground law). The article further explains how the murders of Martin and Davis sparked so much controversy amongst Florida citizens. *Id.*

⁸⁸ Bill Cotterell, *Grieving Parents Join Florida ‘Stand Your Ground’ Protest*, BUSINESS INSIDER (Mar. 10, 2014, 6:50 PM), <http://www.businessinsider.com/grieving-parents-join-florida-stand-your-ground-protest-2014-10> (“Critics, including many civil rights groups, say the law passed under former Republican Governor Jeb Bush has created a license to kill for gun owners who hate or fear young black men”).

⁸⁹ See Carl Ramey, *Florida Gun Law Poorly Written, Lethal*, GAINESVILLE SUN (Apr. 8, 2012, 6:01 AM), <http://www.gainesville.com/article/20120408/OPINION03/120409728> (“This vague and ill-conceived law leaves more room than ever for error in self-defense cases and it sends a very confusing message to citizens of Florida about when lethal force can be used with impunity”); see also *Don’t Make a Bad Stand Your Ground Law Worse*, ADVANCEMENT PROJECT, <http://safequalityschools.org/blog/entry/dont-make-a-bad-stand-your-ground-law-worse> (last visited Nov. 12, 2015) (“It’s time for a wholesale reform of Florida’s so-called ‘Stand your Ground’ law. This is the only

depends entirely on the particular facts of each individual case.⁹⁰ The most devastating of these ambiguities lies with the majority of those claiming Stand Your Ground as a form of self-defense.⁹¹ For example, 60% of those who claimed Stand Your Ground had been arrested on at least one prior occasion while more than 30% had previously threatened another individual with a deadly weapon.⁹² As it stands, confusion among citizens will continue until the Florida Legislature is forced to work through these issues.⁹³

C. States Without Stand Your Ground

Although there are many states that have adopted some form of Stand Your Ground legislation, not every state has been eager to do so. Some states still require an individual to retreat when possible, which include: Arkansas, Connecticut, Delaware, Hawaii⁹⁴, Iowa⁹⁵, Maine, Maryland, Massachusetts, Missouri, Minnesota, Nebraska⁹⁶,

way to prevent the unwanted outcomes we've seen in recent cases and move toward a more just society.”).

⁹⁰ Rachel A. Mattie, *Another Bizarre Twist in Florida's Stand Your Ground Law*, 20 BARRY L. REV. 21 (2015).

⁹¹ Connie Humburg & Kameel Stanley, *Many Killers Who Go Free with Florida 'Stand Your Ground' Law Have History of Violence*, TAMPA BAY TIMES (Jul. 21, 2014, 4:30 AM), <http://www.tampabay.com/news/courts/criminal/many-killers-who-go-free-with-florida-stand-your-ground-law-have-history/1241378> (explaining the shocking statistics tied to those who are invoking Stand Your Ground as a form of self-defense). About one-third of those defendants had been previously accused of violent crimes including assault, battery, robbery, as well as drug offenses. *Id.* Most shockingly, more than thirty percent of defendants had been in trouble with the law on several occasions prior to the self-defense incident where they were illegally carrying a concealed weapon. *Id.*

⁹² *Id.*

⁹³ Mattie, *supra* note 90 and accompanying text (citing Thomas Jefferson: “When the people fear the government there is tyranny, when the government fears the people there is liberty.” At <http://thedeclarationofdependence.org/thomas-jefferson/> (internal citations omitted)).

⁹⁴ HRS § 703-704; *Id.*

⁹⁵ IOWA CODE § 704.6; *Id.*

⁹⁶ *See* NEB. REV. STAT. §1409 (1975); *Id.*

New Jersey, New York, North Dakota⁹⁷, Ohio, Rhode Island and Wyoming.⁹⁸ The law in said states requires its citizens to avoid deadly force if there is an alternative way to safely walk away from the situation (or even running away). If retreating were not possible, then the law in these states would allow the individual to use deadly force as a matter of self-defense.⁹⁹ States like Iowa and Nebraska, allow individuals to use deadly force when the person truly believes that such force is necessary for the preservation of human life.¹⁰⁰ What these states accomplish—through properly worded statutes—is punishing those individuals who really did not fear for their lives but simply wanted to commit murder. The statutes demonstrate that when someone has decided to end the confrontation or even walk away from it, that person who claims to be in fear for their life can no longer claim Stand Your Ground as a form of self-defense.¹⁰¹ Through these statutes, states like Iowa and Nebraska eliminated the use of violence in unnecessary situations.¹⁰²

Non-Stand Your Ground states chose not to implement Stand Your Ground laws because of the negative impact the laws have had on other states.¹⁰³ After the passage of Stand Your Ground laws, there was an increase of 53% in justifiable homicides while those states that chose not to pass said laws saw a five percent decrease.¹⁰⁴

Additionally, those states who continue to enforce a “duty to retreat” component in its statutes do so because there has been no correlation to a decrease in violence since the enactment of Stand Your Ground laws.

⁹⁷ See N.D. CENT. CODE § 12.1-05-07 (2013); *Id.*

⁹⁸ *States That Have Stand Your Ground Laws*, FIND LAW (last visited Oct. 27, 2016), <http://criminal.findlaw.com/criminal-law-basics/states-that-have-stand-your-ground-laws.html> (listing all the states that do and do not have Stand Your Ground laws).

⁹⁹ See NEB. REV. STAT. §1409

¹⁰⁰ See *Id.*; see also IOWA CODE § 704.6.

¹⁰¹ See IOWA CODE § 704.6, *supra* note 95 and accompanying text; see also NEB. REV. STAT §1409, *supra* note 96 and accompanying text.

¹⁰² See Iowa Code, *supra* note 95 and accompanying text; see also Neb. Rev. Stat., *supra* note 96.

¹⁰³ See *Mayors Against Illegal Guns*, *supra* note 47.

¹⁰⁴ *Id.*

D. Post-Martin Era

Following the murder of Martin, another similar event occurred where Michael Dunn (Dunn) shot and killed 17-year-old Jordan Davis (Davis).¹⁰⁵ Dunn allegedly became upset at Davis for playing rap music too loudly at a local gas station, triggering a confrontation that resulted in Davis' death.¹⁰⁶ Dunn shot at Davis three different times and fired an additional seven shots as the Davis' SUV drove away.¹⁰⁷ Although Dunn had committed murder, he claimed he was acting in self-defense and maintained his innocence.¹⁰⁸ A jury convicted Dunn of first-degree murder, three counts of attempted murder, and one count of shooting into a car.¹⁰⁹

¹⁰⁵ See Julia Dahl, "Loud Music" Shooter Michael Dunn Gets Life in Prison, CBS NEWS (Oct. 17, 2014, 11:51 AM), <http://www.cbsnews.com/news/michael-dunn-loud-music-shooter-gets-life-in-prison/> ("Man open fires into a car full of teenagers"); see also Abby Ohlheiser, *Michael Dunn sentenced to life without parole for 'loud music' killing of Jordan Davis*, WASH. POST, (Oct. 17, 2014), <https://www.washingtonpost.com/news/post-nation/wp/2014/10/17/michael-dunn-sentenced-to-life-without-parole-for-loud-music-killing-of-jordan-davis/> ("Dunn fired at the vehicle [ten] times, even as the vehicle drove away; Davis died soon after being shot").

¹⁰⁶ Andrew Pantazi, *Michael Dunn Gets Life, Plus 90 Years for Jordan Davis Killing*, THE FLORIDA TIMES (Oct. 17, 2014), <http://jacksonville.com/news/crime/2014-10-17/story/michael-dunn-gets-life-plus-90-years-jordan-davis-killing>. The case known as a "political springboard" has impacted the already growing opinions associated with Florida's self-defense laws. *Id.* Critics of the law plead that although the law does not require a duty to retreat if they have the chance to do so, people need to have more respect for one another as human beings. *Id.*

¹⁰⁷ *Id.* At the hearing, the judge stressed to Dunn how he could have been responsible for the death of three other human beings that were in the vehicle at the time and that Dunn's behavior was inexcusable no matter what his defense. *Id.*

¹⁰⁸ Pantazi, *supra* note 106. Dunn claimed the teenager had a gun and that he was merely protecting himself. *Id.* Police officers searched the teenager and the vehicle and were unable to find any gun. *Id.* Davis' devastated mother addressed the public saying, "My life as I'd known it was shattered on . . . Black Friday, as it was commonly called, for the day after Thanksgiving. I now call it Black Friday for completely different reasons for me and my family." *Id.*

¹⁰⁹ See Ray Sanchez, *Man Gets Life Without Parole for Murdering Florida Teen Over Loud Music*, CNN (Oct. 17, 2014, 4:29 PM), <http://www.cnn.com/2014/10/17/justice/michael-dunn-sentencing/>; see also Lydia Warren, *The Moment Mother Sobbed in Court as She Forgave White Man who*

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Dunn is serving life plus ninety years in prison without the possibility of parole.¹¹⁰ Statistics show that many individuals have been able to successfully invoke Stand Your Ground. However, some U.S. courts are not always inclined to adopt this option.

In 2014, the states of Montana and Minnesota decided to take a more rigorous approach to the Stand Your Ground law's application. Two homeowners allegedly set traps inside their homes before shooting teenage intruders to death.¹¹¹ Byron Smith, one of the homeowners, was convicted of premeditated murder for taking the lives of two teenage boys who broke into his home.¹¹² Markus Kaarma, another homeowner faced homicide charges after firing a shotgun through his garage door.¹¹³ The victim did not intend to break into the home but instead accidentally tripped and set off one of Kaarma's alarms.¹¹⁴

Shot Her Black Son Dead in Argument Over Loud Music Blaring Out of His SUV, DAILY MAIL (Oct. 17, 2014, 11:19 AM), <http://www.dailymail.co.uk/news/article-2797472/white-man-shot-dead-black-teen-argument-loud-rap-music-sentenced-life-without-parole-victim-s-mother-says-forgives-him.html>. Dunn's sentence consisted of ninety years for three convictions of attempted murder (thirty years for each count) and fifteen years for concurrently firing a gun into an occupied vehicle. Warren, *supra*.

¹¹⁰ See Elizabeth Cannon, *Michael Dunn Sentenced to Life Plus 90 years: 47 Year Old Apologizes to Parents, Says He Regrets What Happened*, NEWS4JAX (Oct. 17, 2014, 6:28 PM), <http://www.news4jax.com/news/michael-dunns-sentencing-hearing-scheduled-for-friday-morning/29185992>; see also Trymaine Lee, et al., *Michael Dunn Found Guilty of First-Degree Murder in Death of Jordan Davis*, MSNBC (Oct. 1, 2014, 11:32 PM), <http://www.msnbc.com/msnbc/michael-dunn-found-guilty-first-degree-murder-death-jordan-davis#54428> (discussing the details of the Dunn case).

¹¹¹ Patrick Johnson, *'Stand Your Ground' Laws: Two Cases May Suggest Limits to Their Protection*, CHRISTIAN SCIENCE MONITOR (May 1, 2014), <http://www.csmonitor.com/USA/Justice/2014/0501/Stand-your-ground-laws-Two-cases-may-suggest-limits-to-their-protections-video> ("The terrible reality is that there's a certain percentage of the population who do not look at these laws as protection but rather as an opportunity") (internal citations omitted).

¹¹² *Id.*

¹¹³ Johnson, *supra* note 112.

¹¹⁴ *Id.* ("The case in Montana has some similarities to a Louisiana incident in 1992; in that earlier case, a Japanese exchange student, Yoshihiro Hattori, was

IV. Future Trends

Stand Your Ground has been an extremely controversial topic in the state of Florida in recent years. Despite statistics that demonstrate the negative impact the law has had, many still wonder about the future of self-defense in the state.¹¹⁵ It may very well be that Florida's government continues to support an expansive self-defense approach. For those who fear the continuance of avoidable murders, there is a glimpse of hope that at some point in the near future, an amendment of the law will be on the senate floor.¹¹⁶ Governor Rick Scott made several public appearances since the murder of Martin.¹¹⁷ In all of those appearances, the governor does not seem to have any intentions of scaling back on the effects of the

killed by a scared homeowner in Baton Rouge after he knocked on the door, looking for a Halloween party”).

¹¹⁵ Hannan, *supra* note 9 (“The Florida Supreme Court, which was left to decide how everything would be handled on a practical level, decided that anyone who claimed self-defense had a right to a hearing in front of a judge before going to trial. If the judge determined self-defense was valid, the charges were dismissed. If a judge denied the self-defense claim, jurors were to be told in jury instructions that defendants had a right to defend themselves and didn’t have a duty to retreat”). Hannan, *supra*. See also Gary Stein, *Should Florida's Stand Your Ground law be expanded?*, SUN SENTINEL (Dec. 1, 2014) <http://www.sun-sentinel.com/opinion/todays-buzz/sfl-should-stand-your-ground-law-be-expanded-20141201-story.html> (explaining the vast amount of criticism the Florida Stand Your Ground Law has received, most of which is “deserved”). The author further explains the uncertainty of the law and its future. Stein, *supra*.

¹¹⁶ See Elizabeth Nickerson, *The Future of Stand Your Ground Law*, WCTV (July 15, 2013), <http://www.wctv.tv/home/headlines/Stand-Your-Ground-Law--215587311.html> (“We don't need stand your ground here in the state of Florida, so that is going to be the other thing we are getting ready to do, we got to turn out to vote and help protect our citizens and protect our children”) (internal citations omitted). *But see* Elliott McLaughlin, *Protesters Stand Up to 'Stand Your Ground,' but Laws Likely Here to Stay*, CNN (Jul. 19, 2013), <http://www.cnn.com/2013/07/18/us/florida-stand-your-ground/> (“Florida Gov. Rick Scott met with protesters overnight and defended his position to not amend his state's controversial stand your ground law”). The article further explains that the Governor is in agreement that the law should remain in place despite some of the negative repercussions it has created. McLaughlin, *supra*.

¹¹⁷ *Id.* and accompanying text.

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law.¹¹⁸ Even after the murder of Martin, the governor did not feel it was necessary to adjust the law in any way.¹¹⁹ The only minor adjustment that was implemented entailed limiting neighborhood watchers to “observing and reporting.”¹²⁰ As many have argued—and the governor seems to agree—the law is relatively new and it seems unlikely that the same legislators who put the law in motion will want to retract it and admit defeat.¹²¹ In 2013, the legislators of the state of Florida met to discuss their intentions concerning Stand Your Ground. The result was a wholehearted denial to the proposition to repeal the law in its entirety.¹²² Given the drastic measures proposed, the legislators immediately rejected the idea.¹²³ The legislature further went on to create a separate bill, which eventually led to the creation of the “warning shot” provision.¹²⁴ Additionally, the NRA is an extremely powerful tool in all the states that have some form of stand your ground legislation, including Florida.¹²⁵ The powerful presence of the NRA in these states makes it more likely than not that the laws will stay firmly in place.

Moreover, Stand Your Ground continues to be invoked often. The recent case of *Little v. State*, demonstrates the ability of a convicted felon to invoke the infamous defense.¹²⁶ Little (the

¹¹⁸ Nickerson, *supra* note 116.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Florida Panel Rejects ‘Stand Your Ground’ Law Repeal, Expands its Scope Instead*, RUSSIA TIMES (Nov. 8, 2013), <https://www.rt.com/usa/florida-defends-stand-your-ground-458/> (describing the process the legislature underwent to strike down the suggestions to repeal Stand Your Ground laws in Florida).

¹²² *Id.*

¹²³ *Id.*

¹²⁴ See generally Van Sickler, *supra* note 63 (explaining the ins and outs of the warning shot provision).

¹²⁵ See McLaughlin, *supra* note 116 (“I think there is some popular appeal to the notion, the very general notion, that citizens should be able to protect themselves and you shouldn’t have to, in essence, run from crime”) (internal citations omitted).

¹²⁶ *Little v. State*, 111 So.3d 214 (Fla. 2d DCA 2013) (“defendant was not precluded from relying on [the] ‘Stand Your Ground Law’ even though he was a felon in possession of a firearm at time he killed the victim”).

convicted felon) shot at a man named Brooks in self-defense.¹²⁷ The prosecution argued that Little could not invoke the defense of Stand Your Ground for two reasons.¹²⁸

First, the prosecution stated that Little had not acted in self-defense because he “reengaged Brooks after removing himself from the initial threat, and Little was not entitled to immunity under the [statute] because he was engaged in an unlawful activity as a felon in possession of a firearm.”¹²⁹ The Second District Court of Appeals disagreed and stated there was no evidence to demonstrate that Little had in fact reengaged Brooks.¹³⁰ However, that was not the only issue in the case. Under Florida’s Stand Your Ground law, an individual cannot invoke protection under the statute if he or she is engaged in an unlawful activity.¹³¹ Little (a convicted felon) was not allowed to be in possession of a firearm. However, the court did not seem to think this was an issue.¹³²

The Court granted Little immunity from prosecution under a different section of the statute.¹³³ The case of *Little v. State* further proves that not only the federal government but also the court system does not intend to cut back on the protections offered by this powerful law. Whether the individual is a convicted felon and breaking the law by having a firearm in his or her possession or whether the individual is a law-abiding citizen, either one is entitled to the statute’s protection. These decisions may seem alarming to folks who are hopeful and optimistic that one day the law will change. Based on numerous cases, studies, and speeches given by

¹²⁷ *Id.*

¹²⁸ *Little v. State*, 111 So.3d 214.

¹²⁹ *Id.* The circuit court who originally heard the case agreed with the prosecution that Little had reengaged Brooks after removing himself from the situation. *Id.* The Second District Court of Appeals, however, disagreed. *Id.*

¹³⁰ *See Little*, 111 So.3d at 222.

¹³¹ *Id.*

¹³² *Id.* The court stated that because Little was “in illegal possession of a firearm, his use of force did fall within the protections of section 776.013.” *Id.* However, the court concluded “Little sought immunity based on the use of force permitted in section 776.012.” *Id.* at 222.

¹³³ *See Little*, 111 So.3d at 222.

powerful government figures it does not seem as though the state intends to cut back on this law any time soon.¹³⁴

V. *Appraisal of Past and Future Decisions*

A. *Increase or Decrease in Crime?*

Mark Hoekstra, a Texas A&M researcher, conducted a controversial study where he demonstrated the correlation between crime rates and Stand Your Ground states.¹³⁵ The study also focused on crime rates in non-Stand Your Ground states.¹³⁶ After several months of research, Hoekstra discovered that the expansive self-defense laws did not have a deterrence effect on crime rates.¹³⁷ He obtained these results by comparing the murder rate in states before and after the laws were passed.¹³⁸ The results demonstrated that states with Stand Your Ground laws had 500 to 700 more murders per year.¹³⁹ Hoekstra also found an increase in “justifiable homicide” rates—meaning excusable—because of the invocation of Stand Your

¹³⁴ Morgan Whitaker, *Stand Your Ground Repeal Rejected in Florida*, MSNBC (Nov. 7, 2013, 9:00 PM), <http://www.msnbc.com/msnbc/stand-your-ground-repeal-rejected-florida> (“During a five-hour hearing, the Florida House Subcommittee on Criminal Justice voted 12-1 to advance a bill that would expand the scope of the law by allowing someone to brandish or discharge that weapon ‘in defense of life, home, & property’ and voted down a Democrat-backed measure to repeal the law entirely 11 to 2”) (internal citations omitted).

¹³⁵ Hoekstra, *supra* note 46.

¹³⁶ See Shankar Vedantam, *‘Stand Your Ground’ Linked to Increase in Homicides*, NPR (Jan. 2, 2013, 4:50 PM), <http://www.npr.org/2013/01/02/167984117/-stand-your-ground-linked-to-increase-in-homicide> (“[R]esearchers who’ve studied the effect of the laws have found that states with a stand your ground law have more homicides than states without such laws”). See also Chandler McClellan & Erdal Tekin, *Stand Your Ground Laws and Homicides*, FL GOV (Jun. 2012), http://www.flgov.com/wp-content/uploads/citsafety/20120913_secondchance1.pdf (comparing and contrasting the different statistical evidence among Stand Your Ground states).

¹³⁷ Vedantam, *supra* note 136.

¹³⁸ *Id.*

¹³⁹ *Id.*

Ground.¹⁴⁰ The research demonstrated that everyday fist fights in a bar escalated to something more violent and dangerous because of the law's protection.

Conversely, some argue that there is no correlation between these laws and crime rates. According to an investigative study conducted by Representative Dennis Baxley, violent crime has dropped "significantly in Florida since 2005."¹⁴¹ By 2010, the crime rate had dropped an additional twenty-three percent since the law's enactment. According to Baxley, the crime rate was also at a significant low between 2000-2005.¹⁴² Baxley believes that Stand Your Ground has actually been beneficial to the state and that it does not encourage individuals to pursue or confront other people in a violent manner.¹⁴³ He further believes that the law has no correlation with these low crime rates. Stand Your Ground was implemented to help others that may be in a situation where deadly force is needed not to encourage unjustifiable homicides.¹⁴⁴

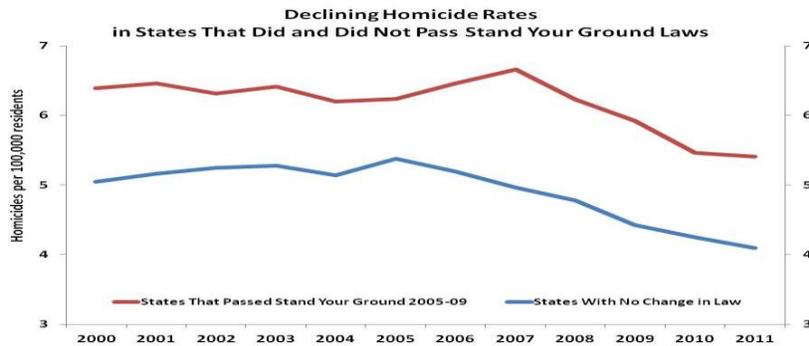
¹⁴⁰ *Id.*

¹⁴¹ Angie Holan, *Crime Rates in Florida Have Dropped Since 'Stand Your Ground,' Says Dennis Baxley*, POLITIFACT (Mar. 23, 2012, 5:58 PM), <http://www.politifact.com/florida/statements/2012/mar/23/dennis-baxley/crime-rates-florida-have-dropped-stand-your-ground/> ("There has been a drop, but rates were declining before the law went into effect. We found no proof that that the 'stand your ground' law caused the drop in crime rates") (internal citations omitted).

¹⁴² *Id.*

¹⁴³ *Id.* Baxley admitted that justifiable homicide rates in Florida had increased but stated that it was only one statistic of the many that were worthy of recognition. *Id.* He further stated that the law was not created to encourage aggressors to pursue their victims. *Id.*

¹⁴⁴ See John Lott, *Perspective: In Defense of Stand Your Ground Laws*, CHICAGO TRIBUNE (Oct. 28, 2013), http://articles.chicagotribune.com/2013-10-28/opinion/ct-oped-1029-guns-20131029_1_ground-laws-blacks-ground-defense ("The laws make it easier for would-be victims to protect themselves when the police can't arrive fast enough"). See also Patrick Howley, *Blacks Benefit from Florida 'Stand Your Ground' Law at Disproportionate Rate*, DAILY CALLER (Jul. 16, 2013, 10:02 PM), <http://dailycaller.com/2013/07/16/blacks-benefit-from-florida-stand-your-ground-law-at-disproportionate-rate/> (demonstrating the frequent use of Stand Your Ground by African Americans in the state of Florida). The law has been invoked successfully many times and has benefited many individuals. Howley, *supra*.

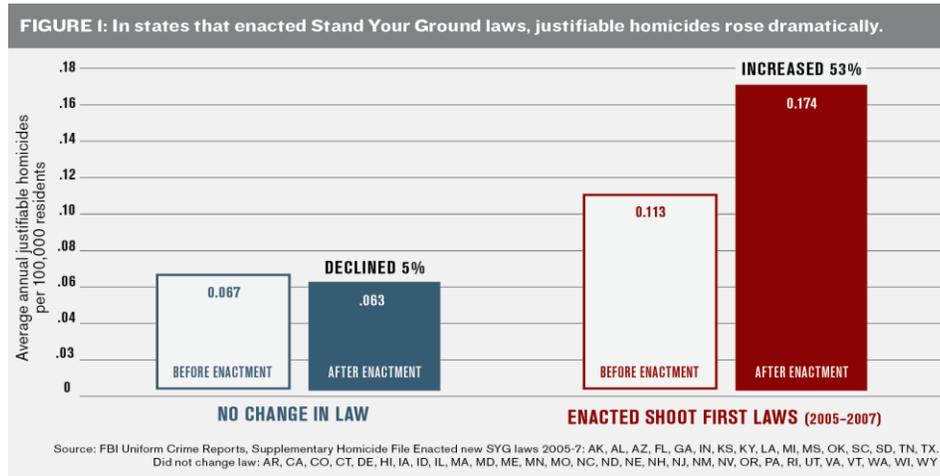
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Since the passage of Stand Your Ground laws, the occurrence of tragic incidents connected to the law caused many families pain and suffering.¹⁴⁵ From a sixteen-year-old walking to visit his father to a father texting his babysitter during movie previews, these heinous disasters continue to demonstrate how shoot first laws continue to endanger the lives of the public by allowing individuals to take the law into their own hands instead of promoting civility among each other.¹⁴⁶ The Florida Legislature needs to address the repercussions of this law and take a firm stance against the harm

¹⁴⁵ See Editorial: 'Stand Your Ground' is a Recipe For Tragedy, USA TODAY (Mar. 26, 2012, 9:07 PM), <http://usatoday30.usatoday.com/news/opinion/editorials/story/2012-03-26/stand-your-ground-trayvon-zimmerman/53795046/1>; see also Repeal "Shoot First Laws", COLOR OF CHANGE, http://colorofchange.org/campaign/end-shoot-first/original_email/ (last visited Apr. 16, 2017) (explaining how shoot first laws allow for vigilante homicide under circumstances that would otherwise allow for murder charges).

¹⁴⁶ *Developing Trend in Gun Legislation: The Trayvon Martin Exception to Stand Your Ground Laws*, SMART GUN LAWS (Feb. 7, 2014), <http://smartgunlaws.org/developing-trends-in-gun-legislation-the-trayvon-martin-exception-to-stand-your-ground-laws/>. These "strong" laws have an overwhelming impact on the criminal and civil justice systems because they prevent law enforcement personnel from executing their jobs and deprive the victims of any available remedies by providing blanket immunity from criminal and civil prosecution those who allege they were acting in self-defense. *Id.*

caused to the endless victims who have innocently suffered as a result of the misuse of this so-called “protection.”¹⁴⁷



The issue with Florida’s Stand Your Ground law is not only how easily people can assert a defense against murder, but also how little value the law places on human life.¹⁴⁸ Prior to the Stand Your Ground enactment in 2005, individuals maintain the civic duty to

¹⁴⁷ See Dan Abrams, *Trayvon Martin Case: Does Zimmerman's Self Defense Claim Depend on Who Started the Fight?*, ABC NEWS (May 18, 2012), <http://abcnews.go.com/blogs/headlines/2012/05/trayvon-martin-case-does-zimmermans-self-defense-claim-depend-on-who-started-the-fight/> (“The law is incredibly protective of the defendant and for everyone who has pointed fingers of blame at the police and prosecutors ... fingers would have been far more accurately pointed at the Florida legislature.”).

¹⁴⁸ See Sunnubian *supra* note 14 (“Florida's vague SYG law has had unintended consequences; namely that it enables criminals to get away with murder”); see also Michael Pearson, *Florida Shooting Renews Debate Over 'Stand Your Ground' Laws*, CNN (Mar. 20, 2012, 9:22 PM), <http://www.cnn.com/2012/03/20/us/florida-teen-shooting-law/> (elaborating on how those who are against gun violence feel that the law is an invitation to shoot first and ask questions later). Many against the law believe that the issue is not one of self-defense but rather one of provoking someone enough to enter into a confrontation and then shooting to kill. Pearson, *supra*.

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avoid an unnecessary confrontation before relying on deadly force.¹⁴⁹ While this situation was not always feasible, it placed a duty on individuals to consider one another and promoted a more peaceful society by requiring individuals to avoid deadly confrontations.¹⁵⁰ The law in essence turned ordinary everyday citizens into the criminals the law seeks to punish.¹⁵¹

Taking into consideration the issues that have arisen as a result of the law, the statistical data, and the decisions handed down by the courts, it seems as though something is out of place. The right to bear arms found in the U.S. Constitution did not grant Americans the right to freely shoot and kill whomever they fear poses a threat.¹⁵² Going forward, this is an issue that needs to be closely examined by U.S. state and federal governments.

¹⁴⁹ See Jeffrey Bellin, *How 'Duty to Retreat' Became 'Stand Your Ground'*, CNN (Mar. 21, 2012, 7:30 PM), <http://www.cnn.com/2012/03/21/opinion/bellin-stand-your-ground-law/> (explaining how Florida once required a "duty to retreat" where someone who found themselves in a violent confrontation had to try and eliminate the situation because deadly force was only permitted as a last resort); see also *"Stand Your Ground" Laws: Civil Rights and Public Safety Implications of the Expanded Use of Deadly Force*, HOMELAND SECURITY (Oct. 29, 2013), <https://www.hsd.org/?view&did=747229> ("Prior to 2005, Florida law held that a person outside his home could not use deadly force and then claim self-defense if the person could have safely avoided the confrontation.").

¹⁵⁰ See Ladd Everitt, *Why 'Stand Your Ground' is really 'Kill at Will'*, WAGING NON-VIOLENCE (May 11, 2012), <http://wagingnonviolence.org/feature/why-stand-your-ground-is-really-kill-at-will/> (questioning the way the law is now based on the idea that in the states that have some form of Stand Your Ground, "if you've had a terrible day, if you just don't like the other guy very much or if you want to try out that new handgun you just bought, you can feel free to escalate the level of violence in a physical altercation by shooting him.").

¹⁵¹ *Id.*

¹⁵² See generally Eric Blair, *Don't Confuse The Right To Bear Arms For A Right To Commit Violence*, ACTIVIST POST (Dec. 17, 2012), <http://www.activistpost.com/2012/12/dont-confuse-right-to-bear-arms-with.html> ("The right to own a gun is not a license to kill, it's a right to self-defense.").

B. Recommendations

The first solution I would suggest is to remove the Florida Legislature's newly added warning shot provision.¹⁵³ Although this amendment was created in order to address the issues connected with Stand Your Ground situations, it has been interpreted as a provision that can either reduce or enhance the effects of the current law.¹⁵⁴ The warning shot seems to give individuals the opportunity to "warn" the aggressor before relying on the use of deadly force, however, those who do fire a warning shot will not be criminally liable for doing so.¹⁵⁵ This becomes problematic when people begin to fire bullets into the air not knowing where the bullet may land and seek the law's protection.¹⁵⁶ Further, the law provides a shield for those who fire a warning shot by expunging their criminal records, which could trigger a repetitive succession of criminal behavior.¹⁵⁷

¹⁵³ Ashley Lopez, 'Warning Shot' Bill Heads to Rick Scott, FCIR (Apr. 8, 2014), <http://fcir.org/2014/04/08/warning-shot-bill-heads-to-rick-scott-stand-your-ground-controversy/> (explaining how the bill allows anyone with a clean record to carry a weapon and/or shoot the weapon or shoot a warning as a form of self-defense without facing any criminal punishment). However, what the public does not know is that the law would also hide court documents of people that are charged with firing a warning shot making those documents unavailable to the public. *Id.*

¹⁵⁴ See Van Sickler, *Warning Shot Bill*, *supra* note 63 ("The bill appears to weaken the portion of stand your ground that applies to defending one's home or vehicle"). *But see* Henry Pierson Curtis, *Florida considers expanding 'stand ground' to allow warning shots*, ORLANDO SENTINEL, (Feb. 27, 2014), http://articles.orlandosentinel.com/2014-02-27/news/os-florida-gun-law-changes-20140223_1_ground-law-r-polk-city-stand-ground ("Proponents defend such bills as an ongoing effort to expand and protect the Second Amendment, the Brady Center to Prevent Gun Violence characterized Florida as the National Rifle Association's testing ground for new laws").

¹⁵⁵ Lopez, *supra* note 153.

¹⁵⁶ Owens, *supra* note 69 and accompanying text.

¹⁵⁷ See Lopez, *supra* note 25; *see also* Kathleen McGory & Michael Van Sickler, *Stand Your Ground, Pop-Tart gun measures clear Florida House*, TAMPA BAY TIMES (Mar. 20, 2014, 5:56 PM), <http://www.tampabay.com/news/public-safety/crime/stand-your-ground-pop-tart-gun-measures-clear-florida-house/2171165> (discussing the benefits of HB 89 by expunging the criminal records in those cases where Stand Your Ground charges are dropped). Further, the proponents of

The quintessential purpose of Stand Your Ground was to allow individuals to protect themselves by using force—including deadly force—when he or she perceived an imminent threat of harm or bodily injury.¹⁵⁸ However, the effect of the law has not served its original purpose.¹⁵⁹ It has created an even larger problem by encouraging individuals to use firearms and resort to violence. Moreover, the warning shot provision fails to criminalize convicted felons that may be in possession of a firearm by allowing the individual to fire a shot, if necessary. Determining when a shot is “necessary” is not always an easy task.¹⁶⁰ This provision, along with

the bill believe it is unconstitutional to have a criminal record for not doing anything wrong. McGory & Van Sickler, *supra*.

¹⁵⁸ See Michael Zalewski, ‘Stand Your Ground’ Makes One Person Judge, Jury, and Executioner, US NEWS, (Mar. 28, 2012, 5:19 PM), <http://www.usnews.com/debate-club/are-stand-your-ground-laws-a-good-idea/stand-your-ground-makes-one-person-judge-jury-and-executioner>. *But see* The Editorial Board, *More Stand Your Ground Mischief in Florida*, NEW YORK TIMES (Nov. 2, 2015), http://www.nytimes.com/2015/11/02/opinion/more-stand-your-ground-mischief-in-florida.html?_r=0 (explaining a new bill that will be before the Florida Legislature in January 2016 where Stand Your Ground will once again be expanded shifting the burden of proof to the prosecution). Recently, the Florida Senate committee approved legislature that “would relieve defendants of the need to prove that they were in fear of their lives.” The Editorial Board, *supra*. Prosecutors will now be required (if the bill is approved) to disprove the self-defense claim during a pretrial evidentiary hearing. *Id.*

¹⁵⁹ *Id.* (“In aiming to compound the deadliness of the current law, Florida can only worsen its reputation as the Gunshine State”); *see also* Christopher Curry, *Bills Would Shift ‘Stand Your Ground’ Burden to Prosecutors*, GAINESVILLE SUN (Oct. 6, 2015, 4:08 PM), <http://www.gainesville.com/article/20151006/ARTICLES/151009809> (“Under the proposed legislation, if a defendant seeks to have a case dismissed by claiming self-defense immunity under the Stand Your Ground law, the prosecution would have to establish beyond a reasonable doubt at a pretrial immunity hearing that the defendant does not qualify for the defense”). The issue presented to the Legislature should be “full of repeal law and not another gift to the gun zealots.” The Editorial Board, *supra*. If the judge grants the defendant’s motion to dismiss at this point, the state attorney’s office may have to pay defendants up to \$200,000 to cover attorney’s fees, court costs, and other related expenses. Curry, *supra*.

¹⁶⁰ Ben Findley, *Should You Threaten the Use of Force and Fire Warning Shots?*, USA CARRY (May 21, 2014), <http://www.usacarry.com/threaten-use-deadly-force-fire-warning-shots/> (“Opponents of the changes worry they will encourage more people to fire shots and would lead to people pulling guns in

other expansions of Stand Your Ground, has made the law susceptible to manipulation and misinterpretation. As mentioned above, Alexander took advantage of this expansion by warning her husband of his potential future. However, analyzing Alexander's actions, she could have been charged with attempted murder.¹⁶¹ By removing the warning shot provision, the legislature would be minimizing the negative impact the law has had in Florida.¹⁶²

The second solution I would recommend comes from two intricate bills that were presented to the Florida legislature.¹⁶³ The bills attack the weak pockets of Stand Your Ground that are open to misinterpretation and leave quite a bit of room for argument.¹⁶⁴ The first bill addresses the allowance of force in a Stand Your Ground situation but avoids the use of deadly force.¹⁶⁵ Oftentimes in these Stand Your Ground cases, individuals find themselves in a situation

unnecessary situations"). The article goes on to explain the issues that may arise when firing warning shots. Findley, *supra*. For example, how many warning shots would be acceptable? Should this even be allowed? Or is this merely another misinterpretation and expansion of our Second Amendment Constitutional rights? *Id.*

¹⁶¹ See *Marissa Alexander Gets 20 years for Firing Warning Shot after Stand Your Ground Defense Fails*, NBC NEWS (May 11, 2012), http://usnews.nbcnews.com/_news/2012/05/11/11660804-marissa-alexander-gets-20-years-for-firing-warning-shot-after-stand-your-ground-defense-fails?lite (explaining how Alexander's husband had his two children by his side when Alexander fired the warning shot). *But see* Susan Eastman, *Marissa Alexander, Florida Woman in 'Warning Shot' Case, Released from Jail*, AMERICA ON-LINE (Jan. 28, 2015, 12:19 PM), <http://www.aol.com/article/2015/01/28/marissa-alexander-florida-woman-in-warning-shot-case-release/21136151/> (recounting the details of the day Alexander shot her husband). Alexander was subsequently charged with three counts of aggravated assault and sentenced to twenty years in prison. *20 years for firing, supra*. Marissa Alexander was set free because "self-defense is not a crime." *Id.*

¹⁶² See Curry, *supra* note 159.

¹⁶³ Karl Etters, *Protesters press for changes in stand your ground law*, USA TODAY (Mar. 10, 2014, 4:24 PM), <http://www.usatoday.com/story/news/nation/2014/03/10/stand-your-ground-protesters/6257543/> ("[B]ills, still potentially in play in the Legislature, would tweak stand your ground to include, a necessary obligation to retreat and use of force only after that option has been exhausted").

¹⁶⁴ Etters, *supra* note 163.

¹⁶⁵ *Id.*

with someone who immediately resorts to a weapon—whether a firearm or otherwise—instead of the common law concept of “physical force.”¹⁶⁶ This restriction would still allow individuals to use self-defense when needed, but would scale down the possibilities of how to use that self-defense.¹⁶⁷

The second bill is two-fold. First, it allows law enforcement personnel to arrest an individual that is using force without having to determine if there is probable cause that said force was unlawful.¹⁶⁸ In the Zimmerman case, when law enforcement personnel arrived on the scene they were not allowed to arrest Zimmerman.¹⁶⁹ Zimmerman—who claimed he was acting in self-defense—automatically invoked the right for law enforcement to leave him alone.¹⁷⁰ Second, the bill proposed proper training of those individuals involved with neighborhood watch services. Neighborhood watch services entail people in the community to take part in keeping their community safe.¹⁷¹ This section of the bill was inspired by the Zimmerman case as well.¹⁷² Zimmerman was a member of his neighborhood watch team and was “on duty” at the

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* The bill would give more leeway to law enforcement personnel when arriving at the scene of a Stand Your Ground invocation.

¹⁶⁹ Juan Ortega, *South Florida neighborhood watch volunteers instructed not to pursue*, SUN SENTINEL (Mar. 23, 2012), http://articles.sun-sentinel.com/2012-03-23/news/fl-neighborhood-watch-groups-warned-20120322_1_neighborhood-watch-program-sanford-shooting-volunteer-programs (explaining how not arresting Zimmerman right away led people to believe they could get away with murder).

¹⁷⁰ Ortega, *supra* note 169.

¹⁷¹ See *About*, NATIONAL NEIGHBORHOOD WATCH, <http://www.nnw.org/about-neighborhood-watch> (last visited Oct. 27, 2016) (“Community members only serve as the extra “eyes and ears” and should report their observations of suspicious activities to their local law enforcement”). See also CITIZENS CRIME WATCH, <http://citizenscrimewatch.com> (last visited Oct. 27, 2016) (“When neighborhood watch is fully operative, you and your neighbors become the ‘Eyes and Ears’ of local police department, telephoning the police at the first hint of suspicious activity”).

¹⁷² See Etters, *supra* note 163.

time Martin was walking back home.¹⁷³ Zimmerman immediately alerted the authorities because it was unusual to have an African American male strolling through his neighborhood.¹⁷⁴ Although local authorities repeatedly reminded Zimmerman to stay away from the alleged suspect and allow for law enforcement to arrive on the scene, Zimmerman took it upon himself to shoot and kill Martin.¹⁷⁵ Implementing some sort of program where individuals in the community are properly trained to serve as neighborhood watch would strengthen the ties between the community and the police allowing for less heinous murders.¹⁷⁶

The third solution I would recommend is to impose on individuals a duty to retreat, if possible.¹⁷⁷ Although Florida law allows for self-defense, one should avoid deadly confrontations and walk away from situations that would ultimately result in a tragedy.¹⁷⁸ If individuals were required to avoid Stand Your Ground

¹⁷³ Michael Muskal and Tina Susman, *Rules for Neighborhood Watch Discussed in George Zimmerman Trial*, LOS ANGELES TIMES, (Jun. 25, 2013), <http://articles.latimes.com/2013/jun/25/nation/la-na-nn-george-zimmerman-neighborhood-watch-20130625> (describing the neighborhood watch program in place at the time of Martin's death).

¹⁷⁴ *Id.* The article discusses that on several occasions Zimmerman reported suspicious activity involving black males in his neighborhood.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ See Curry, *supra* note 159. See also Jessica Travis, *Know the Ground You're Standing On: Analyzing Stand Your Ground and Self-Defense in Florida's Legal System*, 20 BARRY L. REV. 91 (2014) ("Prior to the enactment of 'Stand Your Ground' the 'Self-Defense' case law stated that if the actor has a reasonable method of retreat, they must retreat to safety, if possible, before using self-defense") (internal citations omitted).

¹⁷⁸ Ben Montgomery, *Critics Say Adding Duty to Retreat Would Better Florida's 'Stand Your Ground' Law*, TAMPA BAY TIMES (Feb. 19, 2014, 9:01 PM), <http://www.tampabay.com/news/courts/criminal/critics-say-adding-duty-to-retreat-would-better-floridas-stand-your-ground/2166410> (At the end of the day, if you can walk away safely or resist the impulse to kill . . . you ought to"). People with get into an escalating scenario that is a "normal occurrence in a parking lot or anywhere . . . and suddenly someone says something . . . there is a push and someone ends up getting shot." *Adding Duty to Retreat, supra*. See generally Pete Papaherakles, *Holder Says You Have 'Duty to Retreat'; Bloomberg Battered*, AMERICAN FREE PRESS (Aug. 16, 2013),

situations, the amount of criminal defendants seeking immunity under the statute would minimize substantially because people would be forced to think twice before resulting to deadly force.¹⁷⁹ I am not advocating for a removal of Stand Your Ground legislation nor am I displacing the importance of our second amendment constitutional rights. I am of the position that individuals should not be left with the decision of when to take someone's life. It is true that there may be situations in which the use of deadly force may be inevitable. However, that should not be the case ninety-nine percent of the time.

Finally, it is important to add an extensive list of situations when the use of deadly force would not be considered "justified" under the law. This solution also comes from the Martin case. I would advise Florida to take an approach similar to the approach taken by the state of Alabama. After the Martin shooting, Alabama proposed a bill that would prosecute anyone who "actively pursued another person engaged in a lawful activity in a public place and the pursuit resulted in a confrontation and the use of force, including deadly physical force, against the person initially pursued."¹⁸⁰

If Florida were to add this wording to the current Stand Your Ground statute it would remove many of the situations where the law has been upheld. It would let individuals know that if they choose to pursue someone who is not causing any type of trouble and as a result a death occurs, that individual will not be able to assert that their life was under an imminent threat of deadly force.¹⁸¹ I would

you-have-duty-to-retreat-bloomberg-battered/ ("The duty to retreat states that a person who is under an imminent threat of personal harm must run away from the menace before responding with force in self-defense.").

¹⁷⁹ Hoekstra, *supra* note 42. The increase in homicide rates only occurred in states "after the laws were passed, not before." *Id.* The post-law increase in homicide rates in Florida was "larger than any relative increased observed in the last forty years." *Id.* Studies yielded substantial evidence reflecting that Stand Your Ground laws led to more deadly confrontations by making it easier to kill people. *Id.*

¹⁸⁰ See *States Consider Changes to Stand Your Ground Bill*, BILL TRACK 50 (April 2012), <http://www.billtrack50.com/blog/in-the-news/states-consider-changes-to-stand-your-ground/> (explaining the approach Alabama took after the Martin case).

¹⁸¹ BILL TRACK 50, *supra* note 180.

also encourage the Florida court system to reconsider the invocation of Stand Your Ground when the individual is a convicted felon. As we saw in *Little* and many other cases, the court is allowing convicted felons to seek the statute's protection. An individual who was been incarcerated and/or has committed one too many crimes should not get away with murder that easily.

It has become very clear that the law is more likely to be manipulated than it is to serve its intended purpose. Hopefully in the future, the legislature and the Florida court system will realize how dangerous this law has become.¹⁸² Ideally, the legislature will rework the empowering framework and construct the law in a way where it is more understood by everyday citizens. The idea would be to encourage individuals to avoid deadly confrontations with the notion that the statute is no longer susceptible to manipulation by a savvy attorney or an everyday citizen. Additionally, the court system should apply restraint to its analysis under the law to minimize the impact it has created. The key to the issues associated with Stand Your Ground is not to remove the right of self-preservation that is deeply rooted in the American criminal justice system, but to use that right only for those circumstances where it is justly needed.¹⁸³

¹⁸² Travis, *supra* note 133 ("The perception of the 'Stand Your Ground' law may immensely vary throughout Florida. However, whether the term is flashing throughout the screens of media outlets, sparking deep conversations and debates among the public, or being argued by fervent defense attorneys and zealous prosecutors, section 776.013 will continue to be analyzed, interpreted, and discussed").

¹⁸³ See Jeannie Suk, *Self Defense is Part of Our Heritage*, NEW YORK TIMES (Mar. 21, 2012, 9:22 PM), <http://www.nytimes.com/roomfordebate/2012/03/21/do-stand-your-ground-laws-encourage-vigilantes/self-defense-is-part-of-our-heritage> ("The expansive rhetoric of home protection that gave the new laws such momentum during that time has also made it more likely that a vigilante would perceive the shooting of a black teenager in a gated community as self-defense"); see also Gregory O'Meara, *Stand Your Ground Laws Are Unnecessary*, NEW YORK TIMES, (Mar. 21, 2012, 9:56 PM), <http://www.nytimes.com/roomfordebate/2012/03/21/do-stand-your-ground-laws-encourage-vigilantes/stand-your-ground-laws-are-unnecessary> But see Walter Olsen, *Due Process Will Test a Self-Defense Claim*, N.Y. TIMES (Dec. 4, 2012, 2:00 PM), <http://www.nytimes.com/roomfordebate/2012/03/21/do-stand-your-ground-laws-encourage-vigilantes/due-process-will-test-a-self-defense-claim> ("The old duty to retreat rule made it hard to

invoke self-defense even if you had faced an immediate threat of assault: you could have run away, the state would argue, and conviction would follow.”).