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One Decade Later: Florida's Stand Your Ground Law Alive and Well

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ONE DECADE LATER: FLORIDA'S STAND YOUR GROUND LAW ALIVE AND WELL

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I. Introduction

"I feel paranoid all the time."[1] That is how a seventeen-year old black varsity high school basketball player from Lauderhill, Florida expressed his emotions after a Lauderhill police officer ordered him and his friends to the ground for no apparent reason.[2] Imagine living life in one of the most developed, wealthiest nations in the world with such fear. As a minority law professor, I share the same feelings, and often wonder whether I am next. However, that would be too egocentric. What of those who have suffered or lost lives; those who must face paranoia as an ill-fated daily reality rather than just an emotion? This Article illustrates how Stand Your Ground laws in the United States (U.S.) are a significant cause to this

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[1] Georgia East, *Young and Black in South Florida: 'I feel paranoid all the time,'* SUN-SENTINEL (Mar. 23, 2012), http://articles.sun-sentinel.com/2012-03-23/news/fl-trayvon-martin-walking-while-black-20120323_1_racial-bias-police-officer-america-s-black-upper-class.

[2] *Id.*

reality.

Many proponents of Stand Your Ground Laws argue that these laws reduce crimes and increase safety among the population.[3] On the surface, those appear to be sound policies. However, after comprehensive review and analysis, Stand Your Ground laws serve neither of those policies.[4] Rather, the complete opposite ensued.[5]

In early 2013, the American Bar Association (ABA) established a National Task Force on Stand Your Ground laws (ABA Task Force).[6] The ABA Task Force conducted an extensive, comprehensive legal review and analysis of Stand Your Ground laws across the nation.[7] In September 2015, the ABA Task Force published its findings and recommendations.[8] Among the findings, Stand Your Ground states maintained an increase in the number of homicides.[9] Second, several states tried to amend or repeal their Stand Your Ground laws.[10] Third, the use of Stand Your Ground laws was "unpredictable, uneven, and resulted in racial disparities."[11]

The ABA Task Force recommended state legislatures should not enact Stand Your Ground laws to battle "violent crimes" because

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[3] *See* Christine Catalfamo, *Stand Your Ground: Florida's Castle Doctrine for the Twenty-First Century*, 4 RUTGERS J. L. & PUB. POL'Y 504, 505 (2007); Wyatt Holliday, *"The Answer to Criminal Aggression Is Retaliation": Stand-Your-Ground Laws and the Liberalization of Self-Defense,* 43 U. TOL. L. REV. 407, 417 (2012); *see also* Daniel Michael, *Florida's Protection of Persons Bill*, 43 HARV. J. ON LEGIS. 199, 200-01 (2006); P. Luevonda Ross, *The Transmogrification of Self-Defense by National Rifle Association-Inspired Statutes*, 35 S. U. L. REV. 1, 16 (2007); Stand Your Ground Laws are heavily influenced by the National Rifle Association (NRA).

[4] *National Task Force on Stand Your Ground Laws, Report and Recommendations*, AMERICAN BAR ASSOCIATION (ABA) (Sept. 2015), http://www.americanbar.org/content/dam/aba/images/diversity/SYG_Report_Book.pdf.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] ABA, *supra* note 4, at 2.

[10] *Id.*

[11] *Id.*

said laws did not show a reduction in violent crimes.[12] Rather, the ABA Task Force recommended that states with Stand Your Ground laws should repeal them.[13] The ABA Task Force further stated that Stand Your Ground laws do not reduce homicides; in fact, states with Stand Your Ground laws had an increase of homicides.[14]

Perhaps, one of the most important findings and recommendations of the ABA Task Force is,

> for states that desire to reduce or eliminate racial disparities in the criminal justice system, it is recommended that legislatures amend or repeal statutory Stand Your Ground laws because implicit racial bias has been identified as a significant factor causing inconsistent outcomes in criminal cases involving Stand Your Ground laws.[15]

A broad coalition of leaders called for criminal justice reform.[16] Reforming the criminal justice system requires significant changes to the existing Stand Your Ground laws.[17]

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[12] *Id.*

[13] ABA, *supra* note 4.

[14] *Id.*

[15] *Id.* at 2-3.

[16] *See Reforming the Nation's Criminal Justice System: The Impact of 2015 and Prospects for 2016,* U.S. JUSTICE ACTION NETWORK (Dec. 2015), http://www.justiceactionnetwork.org/wp-content/uploads/2015/12/Justice-Action-Network-Year-End-Report.pdf. National and International Leaders including President Barack Obama, Democratic Presidential Nominee, Hillary Clinton, and Pope Francis, have called for criminal justice reform.

[17] Aya Gruber, *Race to Incarcerate: Punitive Impulse and the Bid to Repeal Stand Your Ground*, 68 U. MIAMI L. REV. 961, 1020-22 (2014); Nirej Sekhon, *The Pedagogical Prosecutor*, 44 SETON HALL L. REV. 1, 21 (2014); Katelyn E. Keegan, *The True Man & the Battered Woman: Prospects for Gender-Neutral Narratives in Self-Defense Doctrines*, 65 HASTINGS L.J. 259, 262 (2013); Mario L. Barnes, *Taking A Stand?: An Initial Assessment of the Social and Racial Effects of Recent Innovations in Self-Defense Laws*, 83 FORDHAM L. REV. 3179, 3197 (2015); Sharon Finegan, *Watching the Watchers: The Growing Privatization of Criminal Law Enforcement and the Need for Limits on Neighborhood Watch*

This article focuses on certain key findings and recommendations of the ABA Task Force outlined above in relation to Florida's Stand Your Ground law. It also examines Florida Stand Your Ground law and its evolution since its inception in 2005.[18] Is Florida safer in 2016 compared to 2005? Has Stand Your Ground delivered positive results ten years later? There have been unsuccessful calls to repeal Stand Your Ground laws in their entirety.[19] Furthermore, this article re-establishes the gravity of this problem and suggests that one critical step forward is to work around the legislatures in implementing reforms.[20]

Part II of the Article articulates the meaning of "Stand Your Ground."[21] Part III examines the history of Stand Your Ground laws in the United States[22], and the intricate relationship with the National Rifle Association (NRA).[23] Part IV of the Article focuses on Florida's Stand Your Ground Law and how the law has changed over

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Associations, 8 U. MASS. L. REV. 88, 134 (2013); Rasheena Latham, *Who Really Murdered Trayvon? A Critical Analysis of the Relationship Between Institutional Racism in the Criminal Justice System and Trayvon Martin's Death*, 8 S. J. POL'Y & JUST. 80, 83 (2014).

[18] *See infra* Part IV.

[19] Alan Williams, *Florida Democrat Sponsors 'Stand Your Ground' Repeal*, HUFFINGTON POST (Aug. 20, 2013), http://www.huffingtonpost.com/2013/08/20/stand-your-ground-repeal_n_3785416.html; Bill Cotterell, *Florida Stand Your Ground Law 'Not Repealable,' Says Expert*, HUFFINGTON POST (Sept. 30, 2013), http://www.huffingtonpost.com/2013/07/31/stand-your-ground-repeal_n_3681539.html; Cristina Marcos, *Florida Dem urges repeal of 'Stand Your Ground' laws*, THE HILL (Feb. 6, 2015), http://thehill.com/blogs/floor-action/house/232025-fla-dem-urges-repeal-of-stand-your-ground-laws; Adam Cohen, *The Growing Movement to Repeal 'Stand Your Ground' Laws*, TIME (Apr. 6, 2012), http://ideas.time.com/2012/04/16/the-growing-movement-to-repeal-stand-your-ground-laws/; Sascha Cordner, *As Some Push To Revive Stand Your Ground Repeal Bill, Others Call It Waste Of Time*, WSFU (Feb. 13, 2015), http://news.wfsu.org/post/some-push-revive-stand-your-ground-repeal-bill-others-call-it-waste-time; Chris Eger, *Michigan Democrats seek to repeal 'stand your ground' laws*, GUNS.COM (Nov. 24, 2015), http://www.guns.com/2015/11/24/michigan-democrats-seek-to-repeal-stand-your-ground-laws/.

[20] *See infra* Part VI.

[21] *See infra* Part II.

[22] *See infra* Part III.

[23] *Id.*

the past decade to date.[24] Part V addresses the nexus between Stand Your Ground laws, violent crimes and gun violence.[25] Part VI proposes a model for progress to the Stand Your Ground laws without action by states' legislatures.[26]

II. The Meaning of Stand Your Ground

"[Stand Your Ground] would allow me to use my instincts, rather than thinking in my mind."[27]

Stand Your Ground laws are sometimes referred to as "make my day"[28] laws, "first shoot"[29] laws, the "true man"[30] rule, or the "no-retreat rule."[31] Broadly, stand your ground means:

> . . . a person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she

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[24] *See infra* Part IV.

[25] *See infra* Part V.

[26] *See infra* Part VI.

[27] *Parents Against Gun Violence*, FACEBOOK (Apr. 19, 2016), https://www.facebook.com/ParentsAgainstGunViolence/photos/pb.413407645397893.-2207520000.1464059116./1031949910210327/?type=3&theater.

[28] Jay M. Zitter, Annotation, *Construction and Application of "Make My Day" and "Stand Your Ground" Statutes*, 76 A.L.R. 6th 1 (originally published in 2012).

[29] *"Stand Your Ground" Policy Summary*, LAW CENTER TO PREVENT GUN VIOLENCE (Jul. 18, 2013), http://smartgunlaws.org/stand-your-ground-policy-summary.

[30] Laura Hunter Dietz et al., 40 AM. JUR. 2D *Homicide* § 160 (Aug. 2016 update); Jeannie Suk, *The True Woman: Scenes from the Law of Self-Defense*, 31 HARV. J. L. & GENDER 237, 240 (2008).

[31] James Buchwalter et al., *Retreat to the wall*, 40 C.J.S. *Homicide* § 215 (June 2016 update); Cynthia V. Ward, *"Stand Your Ground" and Self-Defense*, 42 AM. J. CRIM. L. 89, 90 (2015).

> reasonably believes it is necessary to do so to prevent death or great bodily harm to him or herself or another or to prevent the commission of a forcible felony.[32]

In other words, "... if the defendant is in a place where he or she has a right to be, and is neither engaged in unlawful activity, nor the provoker of, nor the aggressor in, the combat, there is no duty of retreat."[33] The defendant has no duty to retreat whether at home or in a public place.[34]

Stand Your Ground should not be confused with the common law self-defense. It is not an additional affirmative defense.[35] Rather, Stand Your Ground is an expansion of common law self-defense.[36] At common law, defenses were categorized as either justifiable or excusable defenses.[37] Self-defense is considered justifiable when the person who is claiming self-defense had no fault in the resulting incident that necessitated the need to act in self-defense.[38] On the other hand, self-defense may be considered excusable, but not justifiable, when the person claiming self-defense had some degree of fault in the resulting need to use force in self-defense.[39] Self-defense at common law was based on three key factors: reasonableness, necessity, and proportionality.[40] The need to

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[32] Zitter, *supra* note 28.

[33] Buchwalter et al., *supra* note 31.

[34] *Id.*; *see also* Catalfamo, *supra* note 3, at 524; Jason W. Bobo, *Following the Trend: Alabama Abandons the Duty to Retreat and Encourages Citizens to Stand Their Ground,* 38 CUMB. L. REV. 339, 360 (2008); L. Song Richardson & Phillip Atiba Goff, *Self-Defense and the Suspicion Heuristic*, 98 IOWA L. REV. 293, 330 (2012); Ward, *supra* note 31, at 134.

[35] Elizabeth Bosek et al., *Generally; statutory abolishment of common-law duty to retreat*, 16 FLA. JURIS. 2D CRIM. L. § 523 (Aug. 2016).

[36] *See* Wayne R. LaFave, *Self Defense*, 2 SUBST. CRIM. L. § 10.4 (2d ed.) (West Oct. 2015); Charles E. Torcia, *Self Defense*, 2 WHARTON'S CRIMINAL LAW § 127 (15th ed.) (West Sept. 2015); *see also Dorsey v. State*, 74 So. 3d 521, 526 (Fla. 4th DCA 2011).

[37] Torcia, *supra* note 36.

[38] *Id.*

[39] *Id.*

[40] LaFave, *supra* note 36; Paul H. Robinson et al., *Criminal Law Defenses*, 2 CRIM. L. DEF. § 132 (West June 2016).

use force must have been reasonable,[41] necessary,[42] and proportional,[43] or the defendant may be precluded from claiming self-defense.[44] Furthermore, at common law, the following elements of self-defense must have been established in order for a defendant to properly prove the defense.[45] An individual is justified in using force[46] if: "(1) an aggressor unjustifiably threatens harm to the actor; and (2) the actor engages in conduct harmful to the aggressor (a) when and to the extent necessary for self-protection, (b) that is reasonable in relation to the harm threatened."[47]

Embedded in the common law elements of self-defense is the principle of retreat, commonly referred to as the "retreat to the wall" doctrine.[48] Meaning, in a self-defense scenario, a defendant must retreat to avoid the conflict, but only if the defendant can do so safely.[49] There is one key exception to the duty to retreat at common law commonly referred to as the "Castle Doctrine."[50] Although the Castle Doctrine has been expanded from its initial British common law version, it meant that a defendant did not need to retreat if he or she is attacked in his or her dwelling.[51] This is true, even if the

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[41] Daniel Sweeney, *Standing Up to "Stand Your Ground" Laws: How the Modern NRA-Inspired Self-Defense Statutes Destroy the Principle of Necessity, Disrupt the Criminal Justice System, and Increase Overall Violence*, 64 CLEV. ST. L. REV. 715, 720 (2016).

[42] *Id.* at 719.

[43] *Id.*

[44] LaFave, *supra* note 36; Paul H. Robinson et al., *Criminal Law Defenses*, 2 CRIM. L. DEF. § 132 (West June 2016).

[45] Robinson et al., *supra* note 44.

[46] *See* Russell L. Wald, *Privileged Use of Force in Self-defense*, 33 AM. JUR. PROOF OF FACTS 2D 211 (Originally published in 1983, updated Aug. 2016), Only the force necessary to repel the attack should be used. Non-deadly force should be used to repel deadly force if it sufficient to repeal the deadly force. Deadly force can only be used if it is the only force that can repeal the attack. Excessive force will result in loss of the self-defense claim.

[47] Robinson et al., *supra* note 44.

[48] Torcia, *supra* note 36; Buchwalter et al., *supra* note 31.

[49] *Id.*

[50] *Id.*

[51] *Id.*

defendant could have retreated safely.[52] The principle is that one should not retreat when threatened or attacked in one's "castle" or home.[53] The "dwelling house" meant the actual house, and any buildings or land immediately within the curtilage of the house.[54]

The Model Penal Code (MPC) provides an analogous retreat to the wall requirement when a defendant is threatened or attacked.[55] According to the MPC, ". . . the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion."[56] The MPC further states that the use of force including deadly force is not justifiable if "the actor knows that he can avoid the necessity of using such force with complete safety by retreating . . . ."[57] One of the exceptions, like the common law Castle Doctrine, is "the actor is not obliged to retreat from his dwelling or place of work, unless he was the initial aggressor or is assailed in his place of work by another person whose place of work the actor knows it to be . . . ."[58]

Among other expansions, Stand Your Ground laws eliminate the duty to retreat when the actor is threatened, but can retreat safely and avoid the conflict, including outside his or her dwelling house or place of employment.[59] The actor can stand his or her ground in any place that he or she has a legal right to be.[60]

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[52] Torcia, *supra* note 36.
[53] *Id.*
[54] *Id.*
[55] *See* MODEL PENAL CODE (MPC) § 3.04, *Use of Force in Self-Protection.*
[56] MPC § 3.04(1), *Use of Force in Self-Protection.*
[57] MPC § 3.04(2)(b)(ii), *Use of Force in Self-Protection.*
[58] MPC § 3.04(2)(b)(ii)(A), *Use of Force in Self-Protection.*
[59] *See infra* note 62.
[60] *Id.*

III. History of the Controversial Stand Your Ground Laws

As of 2014, a majority of states maintain some form of Stand Your Ground laws.[61] To be exact, thirty-three states have said laws.[62] Twenty-four states have enacted Stand Your Ground statutes.[63] Nine states have Stand Your Ground laws based on case law.[64] Sixteen states and the District of Columbia still follow the duty to retreat doctrine.[65]

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[61] ABA, *supra* note 4.

[62] *Id.*

[63] *Id.*; *see also* ALA. CODE § 13A-3-23(b) (2016); ALASKA STAT. ANN. § 11.81.335(b)(5) (West 2016); ARIZ. REV. STAT. ANN. § 13-411(D) (2016); FLA. STAT. ANN. § 776.012(2) (West 2016); GA. CODE ANN. § 16-3-23.1 (West 2016); IND. CODE ANN. § 35-41-3-2(c) (West 2016); KAN. STAT. ANN. § 21-5230 (West 2016); KY. REV. STAT. ANN. § 503.055(3) (West 2016); LA. STAT. ANN. § 14:20(C) (2016); MICH. COMP. LAWS ANN. § 780.972(2)(1) (2016); MISS. CODE. ANN. § 97-3-15(4) (2016); MONT. CODE ANN. § 45-3-110 (2016); NEV. REV. STAT. ANN. § 200.120(2) (2016); N.H. REV. STAT. ANN. § 627:4 (III)(a) (2016); N.C. GEN. STAT. ANN. § 14-51.3(a) (2016); OKLA. STAT. ANN. tit. 21, § 1289.25 (2016); 18 PA. STAT. AND CONS. STAT. ANN. § 505(b)(2.3) (2016); S.C. CODE ANN. § 16-11-440(C) (2016); S.D. CODIFIED LAWS § 22-18-4 (2016); TENN. CODE ANN. § 39-11-611(b)(1) (2016); TEX. PENAL CODE ANN. § 9.32(c) (2016); UTAH CODE ANN. § 76-2-402(3) (West 2016); and W. VA. CODE ANN. § 55-7-22 (West 2016).

[64] *See* ABA, *supra* note 4. California, Colorado, Idaho, Illinois, Oregon, Virginia, Vermont, Washington State, Wisconsin.

[65] *See* ABA, *supra* note 4. Arkansas, Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, Missouri, North Dakota, Nebraska, New Jersey, New York, Ohio, Rhode Island, Wyoming. *See also United States v. Peterson*, 483 F.2d 1222, 1235 (D.C. Cir. 1973) ("In a majority of American jurisdictions, contrarily to the common law rule, one may stand his ground and use deadly force whenever it seems reasonably necessary to save himself. While the law of the District of Columbia on this point is not entirely clear, it seems allied with the strong minority adhering to the common law. In 1856, the District of Columbia Criminal Court ruled that a participant in an affray "must endeavor to retreat, . . . that is, he is obliged to retreat, if he can safely.")

A. Stand Your Ground Law in the United States

For centuries, the laws of self-defense in the United States followed a modified[66] common law self-defense approach.[67] In 2005, Florida was the first state to break the tradition by enacting its Stand Your Ground laws, which expanded common law self-defense.[68] The law of self-defense is not a new invention. Its origin and history traces back to British common law.[69] The common law self-defense principles worked well, serving the policy of safety and defense of person.[70] No ground-breaking event occurred to spur the change.[71] So, why the drastic expansion of self-defense laws among the majority of U.S. states?[72] Certainly not to fix something that was fragmented or broken.[73] The answer can be found in the pockets of big money conservative groups like the NRA[74] and ALEC.[75]

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[66] Catherine L. Carpenter, *Of the Enemy Within, the Castle Doctrine, and Self-Defense*, 86 MARQ. L. REV. 653, 663 (2003).

[67] *See Beard v. United States*, 158 U.S. 550, 562 (1895).

[68] Elizabeth B. Megale, *Deadly Combinations: How Self-Defense Laws Pairing Immunity with A Presumption of Fear Allow Criminals to "Get Away with Murder"*, 34 AM. J. TRIAL ADVOC. 105, 113 (2010).

[69] *See Erwin v. State*, 29 Ohio St. 186, 195 (Ohio 1876).

[70] *See generally* Steven P. Aggergaard, *Criminal Law – Retreat from Reason: How Minnesota's New No-Retreat Rule Confuses the Law and Cries for Alteration-State v. Glowacki*, 29 WM. MITCHELL L. REV. 657, 662 (2002).

[71] Except NRA and ALEC; *see* Ross, *supra* note 3, at 17 ("Yet, at a time when the violent crime rates were down, the NRA began sweeping across the nation, promoting 'stand your ground' laws").

[72] *See* James B. Jacobs, *Why Ban "Assault Weapons"?*, 37 CARDOZO L. REV. 681, 683 (2015), for a comprehensive review of the 1994 Assault Weapons Ban and its expiration in 2004.

[73] *But see* Steven Jansen & M. Elaine Nugent-Borakove, *Expansions to the Castle Doctrine, Implications for Policy and Practice*, National District Attorneys Association, AMERICAN PROSECUTORS RESEARCH INSTITUTE 4 (Mar. 2007), http://www.ndaa.org/pdf/Castle%20Doctrine.pdf, noting the following four factors may have contributed to enactment of Stand Your Ground laws: 1) "A diminished sense of public safety after the terrorist attacks in 2001; 2) A lack of confidence in the criminal justice system's ability to protect victims; 3) The perception that the due process rights of defendants overshadow the rights of victims; and 4) The decrease in gun legislation over the last decade."

[74] *See* Ross, *supra* note 3.

B. The National Rifle Association (NRA) and Stand Your Ground Laws

The influential NRA was formed in 1871.[76] The NRA is a political powerhouse that claims to be "America's foremost defender of Second Amendment rights."[77] Its influence on Florida's legislature and pro-gun laws began earlier than 2005.[78] The NRA has been a dynamic driving force in the enactment of Stand Your Ground statutes across the nation.[79] On April 27, 2015, the NRA on

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[75] *See* Aggergaard, *supra* note 70.

[76] *Id.; A Brief History of the NRA*, NATIONAL RIFLE ASSOCIATION (NRA), https://home.nra.org/about-the-nra/, (last visited Aug. 18, 2016).

[77] NRA, *supra* note 76.

[78] Alex Altman, *Beyond Trayvon: How 'Stand Your Ground' Laws Spread from Florida to Half the U.S.*, TIME (Mar. 28, 2012), http://swampland.time.com/2012/03/28/beyond-trayvon-how-stand-your-ground-laws-spread-from-florida-to-half-the-u-s/.

[79] *See* Ward, *supra* note 31, at 96; Tamara Rice Lave, *Shoot to Kill: A Critical Look at Stand Your Ground Laws*, 67 U. MIAMI L. REV. 827, 837 (2013); Abby Goodnough, *Florida Expands Right to Use Deadly Force in Self-Defense,* NY TIMES (Apr. 25, 2005), http://www.nytimes.com/2005/04/27/us/florida-expands-right-to-use-deadly-force-in-selfdefense.html; Josh Israel, *How The NRA Fueled Florida's 'Stand Your Ground' Law*, THINKPROGRESS; CENTER FOR AMERICAN PROGRESS ACTION FUND (Mar. 22, 2012), http://thinkprogress.org/justice/2012/03/22/449961/how-nra-fueled-floridas-stand-your-ground-law/; Adam Weinstein, *How the NRA and Its Allies Helped Spread a Radical Gun Law Nationwide, Years before Trayvon Martin was killed, gun lobbyists conspired to give Stand Your Ground shooters immunity everywhere*, MOTHER JONES AND THE FOUNDATION FOR NATIONAL PROGRESS (Jun. 7, 2012), http://www.motherjones.com/politics/2012/06/nra-alec-stand-your-ground; Ann O'Neill, *NRA's Marion Hammer Stands Her Ground*, CNN (Apr. 15, 2012), http://www.cnn.com/2012/04/15/us/marion-hammer-profile/; Janie Campbell, *8 Florida Republicans Who Helped Pass 'Stand Your Ground' Or Worked To Keep It On The Books*, HUFFINGTON POST (Jul. 15, 2013), http://www.huffingtonpost.com/2013/07/15/florida-republicans-stand-your-ground_n_3600017.html; Joe Strupp, *Former NRA President: We Helped Draft Florida's "Stand Your Ground" Law*, MEDIAMATTERS FOR AMERICA (Mar. 27, 2012), http://mediamatters.org/blog/2012/03/27/former-nra-president-we-helped-draft-floridas-s/185254; Brendan Fischer, *ALEC Ratified the NRA-Conceived Law That May Protect Trayvon Martin's Killer*, THE CENTER FOR MEDIA AND DEMOCRACY'S PR WATCH (Mar. 21, 2012), http://www.prwatch.org/news/2012/03/11366/alec-ratified-nra-conceived-law-may-protect-trayvon-martins-killer.

its Facebook page, prominently stated:

> Videos of rioters wreaking havoc in Baltimore and photos of them risking the lives of innocents by punching, throwing objects, and, in one instance, drawing back a knife with which to stab a bystander were reminders that *Stand Your Ground laws* are an antidote for brazen in-your-face attacks on city streets. While these laws do not affect people peacefully protesting an incident or a situation with which they do not agree, the laws would affect rioters who physically attack innocents, if those attacks rise to the level of putting lives at risk.[80] (emphasis added).

The Second Amendment to the United States Constitution clearly states: "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."[81] Any reasonable person should rationalize and agree that there is a tenuous relationship between someone's right to bear arms and standing his or her ground.[82] Far from a simple reading of the Second Amendment, the NRA's quote above, could reasonably be interpreted as a call to attack, to meet violence with violence, and to perpetrate unnecessary attacks.[83] The Second Amendment's right to bear arms should not be interpreted or extended to mean standing one's ground.[84] Such extension and

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[80] *National Rifle Association*, FACEBOOK (Apr. 27, 2015), https://www.facebook.com/NationalRifleAssociation/posts/10153403067281833.

[81] U.S. CONST. amend. II.

[82] *But see* Lydia Zbrzeznj, *Florida's Controversial Gun Policy: Liberally Permitting Citizens to Arm Themselves and Broadly Recognizing the Right to Act in Self-Defense,* 13 FLA. COASTAL L. REV. 231, 272 (2012), ("This public support of the individual right to bear arms likely contributed to the recent explosion of Stand Your Ground legislation.").

[83] *See generally,* Anna Livia Levitt Heller, *Use A Gun and You're Done: How 10-20-Life and "Stand Your Ground" Together Have A Disparate Impact on Florida Citizens*, 43 SW. L. REV. 431, 445 (2014). Stand Your Ground laws perpetuate violence.

[84] *See District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). (Interpreting

analysis defies common logic. Stand Your Ground laws are not the *antidote* for violence and attacks, rather a significant cause.[85] Take a simple hypothetical[86] for instance. Individual "A" is in a public place, that is, individual "A" has a right to be in that place. Individual "A" is armed with a handgun. Individual "B" is also in that same public space and has a right to be there. Individual "B" is not armed. Both are in a Stand Your Ground state. Both individuals, "A" and "B", begin to argue. Individual "A" fears for his safety. Individual "A" could safely leave the area. Instead individual "A" chooses to stand his or her ground and shoots and kills "B." Individual "A" claims the stand your ground defense, and is not charged with a crime. Again, any reasonable person would agree that Stand Your Ground laws are not the remedy for attacks, but rather, a permission to attack. The NRA's agenda is beyond one's right to bear arms.[87] Instead, it is engaged in violence-based propaganda, gun laws that promote violence, and Stand Your Ground laws that encourage killing.[88]

C. The American Legislative Exchange Council (ALEC) and Stand Your Ground Laws

ALEC[89], another organization, closely aligned with the NRA, pushed for Stand Your Ground laws across the nation.[90] ALEC

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the Second Amendment the majority in *Heller* stated, ". . . we find that they guarantee the individual right to possess and carry weapons in case of confrontation.").

[85] ABA, *supra* note 4. The ABA Task Force found that states with Stand Your Ground laws had an increase in homicides.

[86] *See* J. Dave Williamson, *Untying the Hands of Prosecutors in "Stand Your Ground" States: Rethinking the Jury Charge on Reasonableness for Altercations Occurring Outside One's Home*, 6 J. MARSHALL L.J. 243, 279 (2012) for similar hypotheticals and scenarios.

[87] *See* Strupp, *supra* note 79; Fischer, *supra* note 79.

[88] ABA, *supra* note 85.

[89] *The Center for Media and Democracy*, ALEC EXPOSED (Jan. 23, 2014), http://www.alecexposed.org/wiki/What_is_ALEC%3F.

[90] John Nichols, *How ALEC Took Florida's 'License to Kill' Law National*, THE NATION (Mar. 22, 2012), https://www.thenation.com/article/how-alec-took-

claims to be "America's largest nonpartisan, voluntary membership organization of state legislators dedicated to the principles of limited government, free markets and federalism."[91] Members of the NRA are also members of ALEC.[92] According to the Center for Media and Democracy[93]:

> ALEC is not a lobby; it is not a front group. It is much more powerful than that. Through the secretive meetings of the American Legislative Exchange Council, corporate lobbyists, and state legislators vote as equals on 'model bills' to change our rights that often benefit the corporations' bottom line at public expense. ALEC is a pay-to-play operation where corporations buy a seat and a vote on 'task forces' to advance their legislative wish lists and can get a tax break for donations, effectively passing these lobbying costs on to taxpayers.[94]

The Koch family[95] and other corporate conglomerates fund the

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floridas-license-kill-law-national/; Ashley Lopez, *ALEC, Backer of Stand-Your-Ground Laws, Faces Funding Issues After Trayvon Martin Shooting*, FLORIDA CENTER FOR INVESTIGATIVE REPORTING (Dec. 6, 2013), http://fcir.org/2013/12/06/alec-backer-of-stand-your-ground-laws-faces-funding-issues-after-trayvon-martin-shooting/; Amanda Terkel, *Ted Cruz To ALEC: 'Stand Your Ground' Against Dick Durbin*, HUFFINGTON POST (Jan. 23, 2014), http://www.huffingtonpost.com/2013/12/05/ted-cruz-alec_n_4392721.html.

[91] *About ALEC,* AMERICAN LEGISLATIVE EXCHANGE COUNCIL (ALEC), https://www.alec.org/about/ (last visited Aug. 18, 2016).

[92] *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-yourground?page=3.

[93] Center for Media and Democracy is a non-profit progress group. *See What We Do*, CENTER FOR MEDIA AND DEMOCRACY'S PR WATCH, http://www.prwatch.org/ (last visited Dec. 15, 2016).

[94] The Center for Media and Democracy, *supra* note 89.

[95] R. Muse, *Kochs Secretly Fund the NRA, Chamber of Commerce, Religious Right and Club For Growth*, POLITICUSUSA (Nov. 18, 2015), http://www.politicususa.com/2015/11/18/kochs-secretly-fund-nra-chamber-commerce-religious-club-growth.html.

conservative ALEC group.[96] Many reports concluded that ALEC not only supported Stand Your Ground laws, but also lobbied heavily and was one of the key architects of such laws.[97] Despite the history and political influences that led to the enactment of Stand Your Ground laws, adjustment and changes could be made to improve these laws.[98]

IV. The Evolution of Florida's Stand Your Ground Law

To fully understand and comprehend Florida's Stand Your Ground law, one must understand the law of self-defense in Florida before the 2005 enactment of Florida's Stand Your Ground law.[99] After more than a decade since its enactment, Florida's Stand Your Ground Law has gone through some changes, as discussed below, and has not clarified or eliminated the challenges and injustices caused by the law.

A. Florida's Self-Defense Law Before 2005

Florida's self-defense (use of force in defense of person) law that predated its Stand Your Ground law read as follows:

> A person is justified in the use of force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against such other's imminent use of unlawful force.

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[96] The Center for Media and Democracy, *supra* note 89; Rmuse, *Kochs Secretly Fund the NRA, Chamber of Commerce, Religious Right and Club For Growth*, POLITICUSUSA (Nov. 18, 2015), http://www.politicususa.com/2015/11/18/kochs-secretly-fund-nra-chamber-commerce-religious-club-growth.html.

[97] *See* Nichols, *supra* note 90; Ashley Lopez, *supra* note 90; Terek, *supra* note 90.

[98] *Id.*

[99] *See infra* Part IV, Section A.

> However, the person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony.[100]

This law expired on September 30, 2005.[101] The Supreme Court of Florida explained that in addition to the statutory self-defense outlined above, Florida followed the common law principles of Retreat to the Wall, and the Castle Doctrine exception.[102] The Supreme Court of Florida stated, "... a person may not resort to deadly force without first using every reasonable means within his or her power to avoid the danger, including retreat."[103] It also articulated "an individual is not required to retreat from the residence before resorting to deadly force in self-defense, so long as the deadly force is necessary to prevent death or great bodily harm."[104] Accordingly, Florida's self-defense law before September 2005 was the traditional, standard statutory and common law defense.[105]

B. Original Version of Florida's Stand Your Ground Law Enacted in 2005

Four Florida statutes[106] are applicable in articulating the 2005

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[100] FLA. STAT. ANN. § 776.012 (West 1997); effective until Sept. 30, 2005.

[101] *Id.*

[102] *Weiand v. State*, 732 So. 2d 1044, 1049 (Fla. 1999).

[103] *Id.*

[104] *Id.*

[105] *Id.* at 1049; *State v. James*, 867 So. 2d 414, 416 (Fla. 3rd DCA 2003); *Berrios v. State*, 781 So. 2d 455, 457 (Fla. 4th DCA 2001).

[106] FLA. STAT. ANN. § 776.012 (West 2012) (use of force in defense of person); FLA. STAT. ANN. § 776.013 (West 2013) (home protection; use of deadly force; presumption of fear of death or great bodily harm); FLA. STAT. ANN. § 776.032 (West 2013) (immunity from criminal prosecution and civil action for justifiable use of force), & FLA. STAT. ANN. § 776.031 (West 2013) (use of force in defense of others).

changes to Florida's self-defense law. First, on October 1, 2005, Florida's self-defense (use of force in defense of person) law read as follows:

> A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and *does not have a duty to retreat* if: (1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony . . . .[107] (emphasis added).

Note the Stand Your Ground language added (does not have a duty to retreat).[108]

Second, on October 1, 2005, in its brand new "Home Protection et al." statute, in applicable parts, stated:

> A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be *has no duty to retreat and has the right to stand his or her ground and meet force with force*, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.[109]

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[107] FLA. STAT. ANN. § 776.012 (West 2013), effective Oct. 1, 2005 through June 19, 2014.

[108] *Id.*

[109] FLA. STAT. ANN. § 776.013(3) (West 2013), effective Oct. 1, 2005 through June 19, 2014.

(emphasis added).

Note the statute also added the Stand Your Ground language.[110]

Third, Florida's October 2005 "Use or Threatened Use of Force in Defense of Property" statute, in pertinent parts, stated: "A person who uses or threatens to use force in accordance with this subsection *does not have a duty to retreat* before using or threatening to use such force."[111] (emphasis added). The three statutes above expired on June 19, 2014.[112] Florida courts interpreted the changes in these statutes as essentially abrogating and abolishing the common law duty to retreat to the wall before engaging in use of force, including deadly force under certain circumstances.[113]

The fourth statute (and change in 2005) is commonly known as the immunity provision.[114] This has been characterized as one the most "unprecedented" statute changes.[115] The statute in relevant parts states: "A person who uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force."[116] "Criminal prosecution includes arresting, detaining in custody, and charging or prosecuting the defendant."[117] Substantively, the immunity provision prohibited prosecution of a defendant for standing his or her ground and using force to repeal

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[110] FLA. STAT. ANN., *supra* note 107.

[111] FLA. STAT. ANN. § 776.031(1) (West 2013).

[112] *Id.*; FLA. STAT. ANN., *supra* note 107; FLA. STAT. ANN. § 776.013 (West 2013), effective Oct. 1, 2005 through June 19, 2014.

[113] *Smiley v. State*, 966 So. 2d 330, 335 (Fla. 2007); *Cruz v. State*, 189 So. 3d 822, 831 (Fla. 4th DCA 2015), *reh'g denied* (June 30, 2015), *review denied,* No. SC15-1299, 2016 WL 3344945 (Fla. June 16, 2016); *Dorsey v. State*, 74 So. 3d 521, 526 (Fla. 4th DCA 2011); *McWhorter v. State*, 971 So. 2d 154, 156 (Fla. 4th DCA 2007).

[114] FLA. STAT. ANN. § 776.032 (West 2013).

[115] Tamara F. Lawson, *A Fresh Cut in an Old Wound – A Critical Analysis of the Trayvon Martin Killing: The Public Outcry, the Prosecutors' Discretion, and the Stand Your Ground Law*, 23 U. FLA. J. L. & PUB. POL'Y 271, 302 (2012).

[116] FLA. STAT. ANN., *supra* note 114.

[117] *Id.*

force.[118] It also precluded civil liability claims against the defendant by victims.[119]

Procedurally, Florida courts were not certain how to interpret and apply the immunity provision, given that the statute lacked guidance.[120] For instance, the Fourth District Court of Appeals in *Wonder v. State*[121] certified a conflict and question of great public importance with *Peterson v. State*,[122] *Horn v. State*,[123] *State v. Yaqubie*,[124] and *Gray v. State*.[125] The question of great public importance certified to the Supreme Court of Florida was "Whether Section 776.032, Florida Statutes (2009) (the "Stand Your Ground" law), requires a trial court, upon motion to dismiss, to hold an evidentiary hearing prior to trial, and resolve disputed factual issues to determine whether a defendant has established, by a preponderance of the evidence, his or her entitlement to statutory immunity from prosecution."[126] The Supreme Court of Florida in 2015 in *Bretherick v. State* answered that question and held, ". . . *that the defendant bears the burden of proof, by a preponderance of the evidence, to demonstrate entitlement to Stand Your Ground immunity at the pretrial evidentiary hearing.*"[127] (emphasis added).

A bill was introduced in 2016 to amend section 776.032, particularly, the procedural requirements.[128] Pertinent parts of the proposed language included:

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[118] *Brown v. State*, 135 So. 3d 1160, 1161 (Fla. 1st DCA 2014).

[119] *Pages v. Seliman-Tapia*, 134 So. 3d 536, 540 (Fla. 3d DCA 2014), reh'g denied (Apr. 4, 2014).

[120] *Wonder v. State*, 64 So. 3d 1208 (Fla. 2011).

[121] *Moninger v. State*, 52 So. 3d 696 (Fla. Dist. Ct. App. 2010), review granted, decision quashed, 64 So. 3d 1208 (Fla. 2011).

[122] *Peterson v. State*, 983 So. 2d 27 (Fla. 1st DCA 2008).

[123] *Horn v. State*, 17 So. 3d 836 (Fla. 2d DCA 2009).

[124] *Yaqubie v. State*, 51 So. 3d 474 (Fla. 3d DCA 2010).

[125] *Gray v. State*, 13 So. 3d 114, 115 (Fla. 5th DCA 2009).

[126] *Monginger*, 52 So. 3d 696 (Fla. Dist. Ct. App. 2010), review granted, decision quashed, *Wonder*, 64 So. 3d 1208.

[127] *Bretherick v. State*, 170 So. 3d 766, 775 (Fla. 2015). Note the Defendant in *Bretherick v. State* argued that the State should have "to prove beyond a reasonable doubt that the defendant's use of force was not justified."

[128] H.B. 169, 118th Reg. Sess. (Fla. 2016).

> The Legislature finds that imposing the burden of proof on a person who uses or threatens to use defensive force as permitted by general law at a pretrial evidentiary hearing substantially curtails the benefit of the immunity from trial provided by this section. The Legislature intends to make it explicit that the state shall bear the burden of proof in establishing beyond a reasonable doubt whether a defendant is entitled to immunity at a pretrial evidentiary hearing in order to disprove a prima facie claim of self-defense immunity. The Legislature has never intended that a person who acts in defense of self, others, or property be denied immunity and subjected to trial when that person would be entitled to acquittal at trial. The amendments to this section made by this act are intended to correct misinterpretations of legislative intent made by the courts and shall apply retroactively to proceedings pending at the time this act becomes a law.[129]

That bill failed.[130] If enacted, it would have expanded the Stand Your Ground protections, by placing the additional burden on the state to disprove entitlement to the immunity by proof of beyond a reasonable doubt.[131]

C. Florida's Stand Your Ground Laws One Decade Later

Since the 2005 amendments and changes, much has been said, written, and proposed regarding how to repeal, change, and amend the laws.[132] Nothing has taken effect.[133] In 2014, some

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[129] H.B., *supra* note 128.

[130] *Id.*

[131] *Id.*

[132] Several bills were introduced in 2015 and 2016, all failed. *See, e.g.*, H.B. 4017, 118th Reg. Sess. (Fla. 2016) and H.B. 4011, 118th Reg. Sess. (Fla. 2016).

amendments emanated, but none that were significant to undo or reduce the radical Stand Your Ground Provisions.[134] There are two key 2014 amendments worth noting. First, subsection 3 of section 776.013 now states, "A person who is attacked in his or her dwelling, residence, or vehicle has no duty to retreat and has the right to stand his or her ground and use or threaten to use force, including deadly force, if he or she uses or threatens to use force . . . ."[135] Section 3 was one of the very broad Stand Your Ground provisions that allowed anyone not involved in an unlawful activity to stand his or her ground if he or she was in any place that he or she had a right to be.[136]

The second significant change was the addition of an unlawful activity requirement throughout the Stand Your Ground provisions.[137] As articulated in Part VI, *infra*, prior to the 2014 amendments, someone could have claimed immunity even if he or she stood his or her ground and used deadly force while engaging in an unlawful activity. The 2014 amendments still appear to allow someone to claim the immunity who is engaged in unlawful activity but who is "attacked in his or her dwelling, residence, or vehicle."[138] So, as Florida's Stand Ground Law stands, it provides no meaningful change to the issues of gun violence, implicit racial bias[139] in

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Both Bills No. 4017 & 4011 were almost identical and proposed to repeal all provisions "specifying that a person has no duty to retreat and has the right to stand his or her ground and meet force with force in certain circumstances." *See also* ABA, *supra* note 4, at 28-29, for a more comprehensive outline of the proposals to amend or repeal Stand Your Ground laws nationally.

[133] ABA, *supra* note 4, at 28-29.

[134] ABA, *supra* note 4, at 29.

[135] FLA. STAT. ANN. § 776.013(3) (West 2016).

[136] FLA. STAT. ANN. § 776.013(3) (West 2013).

[137] FL LEGIS 2014-195, 2014 Fla. Sess. Law Serv. Ch. 2014-195 (C.S.C.S.H.B. 89) (WEST 2014).

[138] *Id.*

[139] Jacob Wolf, *On Death's Doorstep: The Racially Stratified Impact of the Michigan Self-Defense Act and Why Race-Centric Advocacy Is Not the Answer*, 5 COLUM. J. RACE & L. 53, 64 (2015); Ahmad Abuznaid et al., *"Stand Your Ground" Laws: International Human Rights Law Implications*, 68 U. MIAMI L. REV. 1129, 1154 (2014); Mario L. Barnes, *Taking A Stand?: An Initial Assessment of the Social and Racial Effects of Recent Innovations in Self-Defense Laws*, 83

application, procedural guidance, criminal justice reform, and social justice progress.[140]

V. Stand Your Ground Laws Increase Rather Than Deter Crimes[141]

Multiple studies conclude that states with Stand Your Ground laws increased rather than decreased crimes.[142] Consequently, Stand Your Ground laws do not promote good public policy.[143] Crimes, including homicides, burglary, robbery, and aggravated assault are among those that have increased in Stand Your Ground states.[144] Stand Your Ground laws also contributed to larger racial disparities and are a contributing factor to gun violence.[145]

FORDHAM L. REV. 3179, 3180 (2015).

[140] ABA, *supra* note 4.

[141] Anwar Thomas, *What the Statistics won't tell you about Stand Your Ground's Impact in Florida over the last decade*, DREAM DEFENDERS (Oct. 28, 2015), http://www.dreamdefenders.org/syg_in_fl_over_the_last_decade; Anthony Hall, *A Stand for Justice-Examining Why Stand Your Ground Laws Negatively Impact African Americans*, 7 S. REGION BLACK L. STUDENTS ASS'N L.J. 95, 103 (2013); Latham, *supra* note 17.

[142] ABA, *supra* note 4, at 11-14.

[143] *Id.* at 20.

[144] *See infra* Part V, Sections B & C.

[145] *See* Annie Wells, *Home on the Gun Range: Discussing Whether Kansas's New Stand Your Ground Statute Will Protect Gun Owners Who Use Disproportionate Force in Self-Defense*, 56 U. KAN. L. REV. 983, 992 (2008); Michael A. Cohen, *Stand your ground against gun violence*, BOSTON GLOBE (May 24, 2016), https://www.bostonglobe.com/opinion/2016/05/24/stand-your-ground-against-gunviolence/O66S7yY0TEZh01MOvfBZOK/story.html; *see also Shoot First: 'Stand Your Ground' Laws and their Effect on Violent Crimes and The Criminal Justice System*, NATIONAL URBAN LEAGUE, MAYORS AGAINST ILLEGAL GUNS, VOTEVETS.ORG (Sept. 2013), http://everytownresearch.org/documents/2015/04/shoot-first.pdf, discussing the link between Stand Your Ground laws and increased gun related violence.

A. Stand Your Ground Laws Perpetuate Violent Crimes

Dr. John Roman of the Urban Institute conducted comprehensive empirical studies and published a report in July 2013.[146] The study examined, among other hypotheses, the rates of homicides in states with Stand Your Ground laws versus states without Stand Your Ground laws.[147] The study surveyed data from 2005 to 2010 from the FBI Uniform Crime Statistics Supplemental Crime Reports.[148] Below are some key findings.

First, states with Stand Your Ground laws have "statistically significantly higher rates of justifiable homicides" than states without Stand Your Ground laws.[149] Second, the existence of Stand Your Ground laws "is associated with a statistically significant increase in the likelihood a homicide is ruled to be justified for white-on-black, black-on-black, and white-on-white homicides."[150] The report also concluded that the change in likelihood of justified homicides by black on white was inconsequential.[151] Third, "racial disparities are much larger, as white-on-black homicides have justifiable findings 33% more often than black-on-white homicides. Stand Your Ground laws appear to exacerbate those differences."[152] Dr. Roman also concluded that there was "substantial evidence of racial disparities in justifiable homicide determinations."[153] He also found that:

> ... the odds a white-on-black homicide is found justified is 281% greater than the odds a white-on-white homicide is found justified. By contrast, a

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[146] John K. Roman, *Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data*, URBAN INSTITUTE (Jul. 2013), SYG%20Law/412873-Race-Justifiable-Homicide-and-Stand-Your-Ground-Laws%20study%20stats%20urban%20inst.PDF.

[147] *Id.* at 2.

[148] *Id.* at 4.

[149] *Id.* at 7.

[150] *Id.*

[151] Roman, *supra* note 146, at 7.

[152] *Id.* at 9.

[153] *Id.* at 11.

> black-on-white homicide has barely half the odds of being ruled justifiable relative to white-on-white homicides. Statistically, black-on-black homicides have the same odds of being ruled justifiable as white-on-white homicides. ... Being in a SYG state increases the odds of a justifiable finding by 65%.[154]

Another study conducted by Economics Professor Mark Hoekstra and doctoral candidate Cheng Cheng revealed similar results.[155] This study utilized state data from 2000 to 2010 that came from the FBI Uniform Crime Reports.[156] It focused on four crimes: homicide, burglary, robbery, and aggravated assault.[157] Some of the significant findings are as follows. First, the study revealed that there is little evidence to show that strengthening self-defense laws discourages crimes.[158] Second, the study found "significant evidence that the laws[159] lead to more homicides."[160] "Estimates indicate that the laws increase homicides by a statistically significant 8%, which translates into an additional 600 homicides per year across states that adopted the Castle Doctrine."[161]

B. Stand Your Ground Laws are Linked to Increased Gun Violence

According to the National Vital Statistics Report, in 2013,

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[154] Roman, *supra* note 146, at 9.

[155] Cheng Cheng & Mark Hoekstra, *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Castle Doctrine*, NATIONAL BUREAU OF ECONOMIC RESEARCH (June 2012), http://www.nber.org/papers/w18134.pdf.

[156] *Id.* at 2.

[157] *Id.* at 9.

[158] *Id.* at 16-17.

[159] *Id.* Stand Your Ground laws, which the report referred to as "Castle Doctrine."

[160] Cheng, *supra* note 155, at 4.

[161] *Id.*

33,636 persons died from gun related injuries in the United States.[162] That accounts for 17.4% of all injury related deaths in 2013.[163] The very nature of Stand Your Ground laws can lead to increased gun violence. [164] In fact, reports suggest that Stand Your Ground laws have resulted in an increase in gun violence.[165] In a 2012 study, the National Bureau of Economic Research compiled and examined data from gun related homicide victims from 2000 to 2010.[166] The United States Vital Statistics provided the data.[167] The primary hypothesis tested was "the impact of the Stand Your Ground laws on homicides due to gun assaults."[168] Two critical findings were that Stand Your Ground laws "increase firearm related homicides among whites, especially white males"[169], and said laws were "associated with an increase in emergency room visits and hospitalizations due to firearm related injuries."[170]

Similarly, reports suggest that gun related deaths in Florida have increased as a result of enacting Stand Your Ground laws.[171] Two years after Florida enacted its Stand Your Ground laws, gun-related killings increased by more than 200 cases.[172] Although the

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[162] Jiaquan Xu, M.D. et al., *Deaths: Final Data for 2013*, NATIONAL VITAL STATISTICS REPORTS, Vol. 64, Number 2, (Feb. 16, 2016), p. 10, http://www.cdc.gov/nchs/data/nvsr/nvsr64/nvsr64_02.pdf.

[163] Xu, *supra* note 162.

[164] *See* Dan M. Kahan, *The Secret Ambition of Deterrence*, 113 HARV. L. REV. 413, 452 (1999) (for a good discussion of the meaning of "gun").

[165] *See* Wells, *supra* note 146; Cohen, *supra* note 146; *see also Shoot First: 'Stand Your Ground' Laws and their Effect on Violent Crimes and The Criminal Justice System*, *supra* note 146.

[166] Chandler B. McClellan & Erdal Tekin, *Stand Your Ground Laws, Homicides, and Injuries*, NATIONAL BUREAU OF ECONOMIC RESEARCH, 12 (Oct. 2012), http://www.nber.org/papers/w18187.pdf.

[167] *Id.*

[168] *Id.* at 15.

[169] *Id.* at 7.

[170] *Id.* at 7-8.

[171] Pamela Engel, *This Chart Shows An Alarming Rise In Florida Gun Deaths After 'Stand Your Ground' Was Enacted*, BUSINESS INSIDER (Feb. 18, 2014), http://www.businessinsider.com/gun-deaths-in-florida-increased-with-stand-your-ground-2014-2.

[172] Chelsea Parsons, *Jeb Bush's License to Kill, The Deadly Legacy of Gov.*

reports and studies do not conclusively blame Stand Your Ground laws for the increase in gun related homicides, the trend is worth noting. Further analysis should be conducted to examine the potentially numerous unexpected impacts caused by Stand Your Ground laws.

C. Stand Your Ground Laws do not Promote Good Public Policy

Stand Your Ground laws are counterintuitive to good public policy.[173] Advocates of Stand Your Ground laws argue that the laws protect one's right to defend him- or herself.[174] They also argue that Stand Your Ground laws would serve to deter attacks, and that a would-be attacker would think twice before attacking, knowing that their potential victim could respond with deadly force.[175] Supporters "claim that a person should have the right to 'stand like a man' and avoid the humiliation of retreating in the face of a fight."[176] In other words, stand your ground, and take proper position, and kill, even when a safer, non-deadly option such as retreating is possible.[177] However, the data suggests quite the contrary.[178] The duty to retreat actually serves the purpose of protecting one's self and also protects

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Bush's 'Stand Your Ground' Law for Florida and the United States, CENTER FOR AMERICAN PROGRESS ACTION FUND, 3 (July 28, 2015), https://cdn.americanprogress.org/wp-content/uploads/2015/07/28193014/BushStandYourGround-brief-FINAL4.pdf.

[173] Robert J. Spitzer, *The Evidence Shows That "Stand Your Ground" Laws Undermine Law Enforcement and Public Safety*, SCHOLARS STRATEGY NETWORK (July 2015), http://www.scholarsstrategynetwork.org/sites/default/files/ssn-key-findings-spitzer-on-how-stand-your-ground-laws-have-failed.pdf.

[174] Ebonie R. Rocio, *Flip A Coin: Heads, Stand Your Ground Is Good Law . . . Tails, Stand Your Ground Is Bad Law*, 40 T. MARSHALL L. REV. Online 3, 3 (2014).

[175] Nirej Sekhon, *The Pedagogical Prosecutor*, 44 SETON HALL L. REV. 1, 5 (2014).

[176] Megale, *supra* note 68, at 116.

[177] *Id.*

[178] *See supra* Part V, Sections A & B.

the sanctity of life, the greatest gift of humanity.[179] As addressed earlier, under the requirement to retreat, no one has to retreat from a conflict, unless he or she can do so with reasonable safety.[180] Reasonable minds can, therefore conclude, that Stand Your Ground laws which have eliminated the duty to retreat, incite attacks and violence, and invite hostility.[181]

In U.S. criminal law, there are two fundamental principles of punishment: utilitarian and retribution.[182] Retribution is punishment for the sake of punishment.[183] An eye for an eye – the wrongdoer should be punished because doing wrong inherently presupposes punishment.[184] On the contrary, the utilitarian principles of punishment include rehabilitation and deterrence.[185] It gives the wrongdoer an opportunity for social justice and progress.[186] Arguably, proponents of Stand Your Ground laws support the retributive theory. They serve one key purpose: to allow the defendant in a conflict to serve as law enforcement, judge, and jury. A bold claim one could make is that Stand Your Ground laws have transformed the criminal justice system and in doing so, have undermined the safety and general welfare of Americans.

VI. A Model for Progress in Absence of Legislative Action

It is unlikely that states with Stand Your Ground laws will repeal those laws in the near future. It is also doubtful that any meaningful amendments would succeed. So, the next step is how to function with some sense of normalcy with Stand Your Ground laws. To date, the ABA Task Force has made some of the most

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[179] Aggergaard, *supra* note 70.

[180] *See also* ABA, *supra* note 4, at 28-29.

[181] *Id.*

[182] Kahan, *supra* note 165, at 425; *see also* Michele Cotton, *Back with A Vengeance: The Resilience of Retribution As an Articulated Purpose of Criminal Punishment*, 37 AM. CRIM. L. REV. 1313, 1316-17 (2000).

[183] Cotton, *supra* note 183.

[184] *Id.*

[185] *Id.*

[186] *Id.*

comprehensive and utilitarian solutions.[187] The ABA Task Force also recommended repealing these laws.[188] Notwithstanding any repeals or meaningful amendments, the following four tools or temporary solutions should be considered by states with Stand Your Ground laws. These temporary solutions can be achieved without any action by states' legislators. Their focus is on four of the primary parties to the criminal justice and judicial systems: law enforcement, prosecutors, judges, and juries.

A. Law Enforcement

First, law enforcement is the gatekeeper of Stand Your Ground laws like many other criminal laws.[189] As recommended by the ABA Task Force, law enforcement agencies in states with Stand Your Ground laws, should establish proper training programs to train police officers "on the best practices for investigating Stand Your Ground cases", and proper record keeping for these cases.[190] Particularly, in relation to recordkeeping, law enforcement should implement policies to track data of Stand Your Ground cases from beginning to end, including the investigatory, prosecution, and sentencing stages.[191]

B. Prosecutors

Second, prosecutors must continue to exercise proper prosecutorial discretion when evaluating and determining whether to prosecute Stand Your Ground cases.[192] Prosecutors already have a host of factors to consider when deciding whether to prosecute a

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[187] ABA, *supra* note 4, at 3.

[188] ABA, *supra* note 4, at 2-3.

[189] Dan M. Kahan & Tracey L. Meares, *Foreword: The Coming Crisis of Criminal Procedure*, 86 GEO. L.J. 1153 (1998); John N. Gallo, *Effective Law-Enforcement Techniques for Reducing Crime*, 88 J. CRIM. L. & CRIMINOLOGY 1475, 1487 (1998).

[190] ABA, *supra* note 4, at 3.

[191] *Id.*

[192] ABA, *supra* note 4, at 23.

case.[193] They must consider the crime(s) to be charged, whether they can prove the elements of the crime(s) beyond a reasonable doubt, and whether the case is controversial, political, or emotionally driven.[194] Also, prosecutors must consider whether the case is one that is highly publicized, whether a grand jury should decide to charge, just to name a few.[195] Stand Your Ground laws add another, perhaps, more complicated factor to the mix of factors weighed by a prosecutor's professional judgment. Would the prosecutor try the case twice, given the immunity provisions in some of the Stand Your Ground laws?[196]

C. Judges

Third, Stand Your Ground laws puzzle judges, too.[197] Judge Sheila Isaac of Kentucky, who presided over a murder case in which Stand Your Ground was claimed, "said the law apparently went right through the Legislature without a single attorney looking at it. She said the law was addressing a problem that did not exist."[198] Another instance is in *Little v. State.*[199] In his concurring opinion, Judge Northcutt discusses the confusion and potential for misleading given different interpretations of the Stand Your Ground immunity.[200] The court struggled in discerning whether "a defendant who establishes by a preponderance of the evidence that his use of deadly force is

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[193] Lawson, *supra* note 116, at 285.

[194] *Id.*

[195] *Id.*

[196] *Id.*

[197] *Wonder v. State*, 64 So. 3d 1208; *see also* Kris Hundley et al., *Florida 'stand your ground' law yields some shocking outcomes depending on how law is applied*, TAMPA BAY TIMES (Jun. 1, 2012), http://www.tampabay.com/news/publicsafety/crime/florida-stand-your-ground-law-yields-some-shocking-outcomes-depending-on/1233133, noting numerous cases in which the outcome on claiming stand your ground defense were shockingly uneven in cases with similar facts.

[198] *Laws governing use of deadly force in self-defense cases confuse courts*, THE GAINESVILLE SUN (Jul. 10, 2007), http://www.gainesville.com/news/20070710/laws-governing-use-of-deadly-force-in-self-defense-cases-confuse-courts.

[199] *Little v. State*, 111 So. 3d 214, 223 (Fla. 2d DCA 2013).

[200] *Little v. State*, *supra* note 199.

permitted in section 776.012(1), . . . , entitled to immunity under section 776.032(1) even though he is engaged in an unlawful activity at the time he uses the deadly force."[201]

As discussed earlier, the 2014 amendments added language, which suggests someone can no longer claim immunity if he or she engaged in unlawful activity at the time of the attack.[202] The only exception is if the person is attacked in his or her dwelling, residence or vehicle.[203] Judges should continue to exercise their discretion with Stand Your Ground related issues. Additionally, the ABA Task Force recommended, "the ABA develop a training curriculum and educational materials for the judiciary on Stand Your Ground laws, which the ABA Task Force hopes will promote fairness and consistency in the application of Stand Your Ground laws."[204]

D. Jury

Fourth, if Stand Your Ground laws cause confusion to law enforcement, prosecutors, and judges, what about the jury?[205] The complex nature of Stand Your Ground laws could confuse the jury.[206] A juror from the infamous Zimmerman/Martin case made the following comments regarding how jurors struggled with the Stand Your Ground laws.[207] Juror B37 said "the law became very confusing. It became very confusing ...We had stuff thrown at us.

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[201] *Id.* at 222-23.

[202] FL LEGIS 2014-195, 2014 Fla. Sess. Law Serv. Ch. 2014-195 (C.S.C.S.H.B. 89) (WEST 2014).

[203] *See McGriff v. State*, 160 So. 3d 167, 168 (Fla. 1st DCA 2015), the First and Fourth District Court of Appeals of Florida held "that the defense provided in section 776.012(1) is available to persons engaged in an unlawful activity ... ." *Cf.* FL LEGIS 2014-195, 2014 Fla. Sess. Law Serv. Ch. 2014-195 (C.S.C.S.H.B. 89) (WEST 2014).

[204] ABA, *supra* note 4, at 31.

[205] *Id.* at 24.

[206] ABA, *supra* note 4, at 24.

[207] Marc Caputo, *Juror: We talked Stand Your Ground before not-guilty Zimmerman verdict*, MIAMI HERALD (July 16, 2013), http://www.miamiherald.com/news/state/florida/trayvon-martin/article1953286.html.

We had the second-degree murder charge, the manslaughter charge, then we had self-defense, Stand Your Ground."[208] Commenting on another famous Florida case, the Michael Dunn case, Law Professor Mary Anne Franks, of the University of Miami's School of Law, stated that "while it is possible that some jurors may have been 'unprincipled' in their deliberation, the focus should be more on the unfortunate intersection of a law that encourages people to use violence. The jury's job is only complicated by the existence of such a law," she said. "'Stand Your Ground' confuses lawyers, judges and professors. I can only imagine how it affects jurors. [209]

Defense counsels, prosecutors, and the courts should continue to work on simplifying the law in the jury instructions to help alleviate confusion and hopefully provide improved guidance to jurors.

VII. Conclusion

It appears that the political support and trend is in favor of expanding and enacting Stand Your Ground legislation for most of the United States.[210] Movements to repeal Stand Your Ground laws have failed and will continue to fail given the present political demographics among state lawmakers.[211] Limitless support from conservative pro-gun groups like the NRA will continue.[212] All sounds grim.

However, revolution is possible. While it may take a determined resolution to revive the true spirit of the majority of Americans, citizens, activists, law professors, attorneys, statesmen and stateswomen need to rise up together and embrace the struggle to effectuate change. Each needs to do his or her part in prompting and effectuating change. In the meantime, the Stand Your Ground laws

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[208] *Id.*

[209] Amel Ahmed, *Mixed verdict in Dunn trial result of 'Stand Your Ground,' experts say*, AL JAZEERA AMERICA (Feb. 18, 2014), http://america.aljazeera.com/articles/2014/2/17/dunn-trial-blamethelawnotthejuryexpertssay.html.

[210] *See supra* Part III.

[211] *See supra* Part III.

[212] *See supra* Part III, Section B.

will live, but the resolve of the American people to bring about change to the criminal justice system will eventually win. Meanwhile, the four areas of change suggested should be considered.[213] No legislative action is necessary for those changes to take effect, so some sort of progress could commence.

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[213] *See supra* Part VI.