

Stand Your Ground Laws: Mischaracterized, Misconstrued, and Misunderstood

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I. INTRODUCTION

It is universally accepted that the first law of nature is self-preservation. Man, animals, and all organisms seek to survive. When confronted with danger, the fight or flight instinct compels man and animals to do what is necessary to preserve his or its life. It is why our adrenalin flows when we are confronted with danger; it is why we put out our hands to break our fall; and it is even why undomesticated animals run when we come upon them. This law of nature is so basic that every state recognizes the right to use force,¹ including deadly force² and self-defense. The scope of the right to use deadly force to defend oneself has come under particular scrutiny in the past decade due to highly publicized and debated cases, such as *State of Florida v. Zimmerman*,³ combined with the fact that many states changed and expanded their self-defense laws to provide greater protections for law-abiding citizens unlawfully confronted with deadly force.

This Article addresses the parameters of the use of deadly force in self-defense. States establish these parameters by statute or in their common law and fall into one of two general categories:

1. JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 223 (5th ed. 2009).

2. “Deadly force” is commonly defined as force likely to cause death or great or serious bodily injury. ALA. CODE § 13A-3-20(2) (LexisNexis 2005 & Supp. 2012); ALASKA STAT. § 11.81.900(b)(16) (2012); ARIZ. REV. STAT. ANN. § 13-105(14) (2010 & Supp. 2012); ARK. CODE ANN. § 5-2-601(2) (2013); CONN. GEN. STAT. ANN. § 53a-3(5) (West 2012); DEL. CODE ANN. tit. 11, § 471(a) (2007); FLA. STAT. ANN. § 776.012 (West Supp. 2015); HAW. REV. STAT. ANN. § 703-300 (LexisNexis 2007); KAN. STAT. ANN. § 21-5221(a)(2) (West, Westlaw through 2015 Reg. Sess.); KY. REV. STAT. ANN. § 503.010(1) (LexisNexis 2008); MO. ANN. STAT. § 563.011(1) (West 2012); NEB. REV. STAT. § 28-109(6) (2008); N.H. REV. STAT. ANN. § 627:9(II) (LexisNexis 2007 & Supp. 2012); N.J. STAT. ANN. § 2C:3-11(b) (West 2005 & Supp. 2013); N.Y. PENAL LAW § 10(11) (McKinney 2009); N.D. CENT. CODE § 12.1-05-12(1) (2012); 18 PA. STAT. AND CONS. STAT. ANN. § 501 (West 1998 & Supp. 2013); TENN. CODE ANN. § 39-11-611(a)(4) (2014); TEX. PENAL CODE ANN. § 9.01(3) (West 2011).

3. 114 So. 3d 446, 447 (Fla. Dist. Ct. App. 2013). In the *Zimmerman* case, the defendant was charged with the second-degree murder of Trayvon Martin. Zimmerman raised the defense of self-defense under Florida’s statute and was acquitted. The case drew national attention and criticism, much of which was aimed at the Florida statute.

(1) retreat states and (2) no retreat states. In retreat states, if a person is confronted with what he reasonably believes is unlawful deadly force, he must first evaluate whether there is a place to which he can safely retreat and must do so if he can prior to using deadly force in self-defense. In no retreat states, a person may defend against the unlawful threat of deadly force without first retreating, as long as the defender has a reasonable belief that the use of deadly force is necessary to prevent the imminent use of deadly force against himself or another person.⁴ The majority of states in the United States do not impose a duty to retreat before one can lawfully use deadly force to defend against deadly force, as long as the requirements of the state's self-defense or justifiable homicide laws are met.⁵

The public debate regarding self-defense ignited in 2005, when Florida joined the majority of states and abolished the duty

4. See *infra* Section III.A.

5. ALA. CODE § 13A-3-23 (West, Westlaw through Act 2015-559 of the 2015 Reg., First Spec. and Second Spec. Sess.); ALASKA STAT. § 11.81.335 (2012); ARIZ. REV. STAT. ANN. § 13-405 (2010 & Supp. 2012); FLA. STAT. ANN. §§ 776.012 to -.013 (West 2010 & Supp. 2015); GA. CODE ANN. § 16-3-23 (2011); IND. CODE § 35-41-3-2 (West, Westlaw through P.L. 1-2016 and P.L. 2-2016); KAN. STAT. ANN. § 21-5222 (West, Westlaw through 2015 Reg. Sess.); KY. REV. STAT. ANN. § 503.050 (LexisNexis 2008); LA. STAT. ANN. § 14:20 (West, Westlaw through 2015 Reg. Sess.); MICH. COMP. LAWS ANN. § 780.972 (West 2007); MISS. CODE ANN. § 97-3-15 (2006); MONT. CODE ANN. § 45-3-110 (2011); NEV. REV. STAT. ANN. § 200.120 (West, Westlaw through 2015 Reg. & Spec. Sess.); N.H. REV. STAT. ANN. § 627:4 (LexisNexis 2007 & Supp. 2012); N.C. GEN. STAT. § 14-51.3 (2011); OKLA. STAT. ANN. tit. 21, § 1289.25 (West Supp. 2013); S.C. CODE ANN. § 16-11-440 (Supp. 2012); S.D. CODIFIED LAWS § 22-18-4 (2006); TENN. CODE ANN. § 39-11-611 (2014); TEX. PENAL CODE ANN. § 9.32 (West 2011); UTAH CODE ANN. § 76-2-402 (LexisNexis 2012); *Cassels v. People*, 92 P.3d 951, 956 (Colo. 2004) (en banc); *State v. McGreevey*, 105 P. 1047, 1051 (Idaho 1909); *People v. Manley*, 584 N.E.2d 477, 491 (Ill. App. Ct. 1991); *State v. Bartlett*, 71 S.W. 148, 151 (Mo. 1902); *Territory v. Gonzales*, 68 P. 925, 932 (N.M. 1902); *State v. Sandoval*, 156 P.3d 60, 64 (Or. 2007); *Foote v. Commonwealth*, 396 S.E.2d 851, 855 (Va. Ct. App. 1990); *State v. Cushing*, 45 P. 145, 145-46 (Wash. 1896); *State v. Dinger*, 624 S.E.2d 572, 576-77 (W. Va. 2005); *State v. Wenger*, 593 N.W.2d 467, 471 (Wis. Ct. App. 1999); N.M. UNIF. JURY INSTRUCTIONS CRIMINAL § 14-5190 (2015); JUDICIAL COUNCIL OF CAL. CRIMINAL JURY INSTRUCTIONS § 505 (2012); IDAHO CRIMINAL JURY INSTRUCTIONS § 1519 (2010).

to retreat.⁶ After Florida enacted the new law, critics and commentators were quick to christen the law a “stand your ground” law, even though the new statute was not named a “stand your ground” law. In fact, the law incorporated statutory provisions already recognized in other states for decades and required the same basic traditional components for the use of self-defense.⁷ As other states joined Florida in updating and strengthening their self-defense laws to protect law-abiding citizens, the criticisms, mischaracterizations, and misunderstanding of no retreat self-defense laws grew.⁸

This Article seeks to clarify the purpose of and protections afforded by these and other self-defense laws and to dispel the doomsday predictions made by many commentators and critics after Florida joined the majority. Part II of this Article examines the history of the law of self-defense using deadly force. To understand why the laws called “stand your ground” laws created nothing new in the law of self-defense, Part III provides an overview of the law of self-defense, including a discussion of the traditional and still recognized basic components of self-defense, who can use deadly force in self-defense, and protections afforded by so-called “stand your ground” laws. Part IV discusses the current status of and policy behind the justifiable use of deadly force in the various states. In order to debunk the negative treatment of “stand your ground” laws, Part V addresses common criticisms, misrepresentations, and misconceptions of these state laws. Finally, Part VI provides a conclusion and urges no retreat states to maintain or strengthen their protections for law-abiding citizens; challenges retreat states to reconsider their self-defense laws; and rebukes the media, commentators, and politicians for misrepresenting the requirements, application, and effect of “stand your ground” laws.

6. FLA. STAT. ANN. §§ 776.012 to –776.031 (West 2010 & Supp. 2015).

7. *Id.*; see *infra* Section III.A.

8. Ironically, the same criticisms and misrepresentations did not extend to the pre-2005 laws that provided the same protections and represented the majority view.

II. HISTORY OF THE LAW OF SELF-DEFENSE USING DEADLY FORCE

The right to defend oneself by using deadly force is not unique to American jurisprudence. In biblical times, certain types of killings were not deemed murder in violation of the sixth commandment.⁹ For instance, the killing of a thief who broke into another's house at night was not considered murder and was not punished.¹⁰ The lawful use of deadly force in self-defense was also recognized in English common law.¹¹ English common law, however, required a person suddenly assaulted or attacked by another to retreat before using deadly force, even if confronted with deadly force.¹² As Sir William Blackstone put it, a person assaulted "must . . . flee as far as he conveniently can, either by reason of some wall, ditch or some other impediment."¹³ In other words, "it must appear that the slayer had no other possible means of escaping from his assailant" before the "slayer" could use deadly force to defend himself against deadly force.¹⁴ But even Blackstone recognized English law did not require a person to retreat if the "fierceness of the assault" was so fierce that retreating would increase a defender's danger of death or great bodily harm.¹⁵ This meant a person attacked was only required to retreat "as far as he conveniently or safely" could "to avoid the violence of the assault."¹⁶ Furthermore, Blackstone was aware that not all English philosophers and legal and political theorists agreed with him regarding a duty to retreat "to the wall" before using deadly force to defend oneself.¹⁷

John Locke, an influential 17th century political theorist, believed if a man used any amount of force on another without any

9. *Exodus* 20:13, 22:2.

10. *Exodus* 22:2; 4 WILLIAM BLACKSTONE, COMMENTARIES, *182–88 (The Univ. of Chi. Press 1979) (1769).

11. See BLACKSTONE, *supra* note 10, at *182.

12. *Id.* at *184–85.

13. *Id.* at *185.

14. *Id.* at *184.

15. *Id.* at *185.

16. *Id.*

17. *Id.* at *187–88.

right he became an aggressor and was thus in a “state of war” with the person upon whom he used force.¹⁸ Locke said,

This makes it lawful for a man to kill a thief, who has not in the least hurt him, nor declared any design upon his life, any farther than, by the use of force, so to get him in his power, as to take away his money, or what he pleases, from him¹⁹

Locke justified using deadly force against even a thief by going on to say, “[B]ecause using force, where he has no right, to get me into his power, let his pretense be what it will, I have no reason to suppose, that he, who would take away my liberty, would not, when he had me in his power, take away everything else.”²⁰ According to Locke, that put the would-be thief at war with his intended victim and exposed him to deadly force.²¹ It is clear Locke did not agree with the English common law’s requirement of retreating before using deadly force to defend against deadly force.

Just as the United States of America established a government different from that of England, the new country did not embrace the “retreat to the wall” mentality of England, as expounded by Blackstone.²² Locke’s political views and philosophies influenced the Declaration of Independence and many of our founders.²³ It is, therefore, not surprising that the majority of the new states did not adopt the English duty to retreat before using deadly force to defend against deadly force and instead allowed those confronted with deadly force to stand their ground and not retreat.²⁴ In 1921, Justice Holmes, writing for the Court in *Brown v. United States*, summed up the American attitude toward retreat when he said, “Detached reflection cannot be demanded in the presence of an uplifted knife.”²⁵

18. JOHN LOCKE, TWO TREATISES ON GOVERNMENT 107 (Ian Shapiro ed., Yale Univ. Press 2003) (1690).

19. *Id.* at 107–08.

20. *Id.* at 108.

21. *Id.*

22. *Beard v. United States*, 158 U.S. 550, 561–63 (1895).

23. *See* JOHN DUNN, THE POLITICAL THOUGHT OF JOHN LOCKE 6 (1969).

24. *Beard*, 158 U.S. at 561–63.

25. 256 U.S. 335, 343 (1921).

Some states, however, did follow the English tradition of imposing a duty to retreat before using deadly force in self-defense. But even those states recognized an exception, the castle doctrine, which abolished the duty to retreat in one's home or dwelling before using deadly force in self-defense and allowed a person to "stand his ground."²⁶ Justice Cardozo emphasized the historical recognition of the castle doctrine when he said, "It is not now, and never has been the law that a man assailed in his own dwelling, is bound to retreat. If assailed there, he may stand his ground, and resist the attack."²⁷

As our country grew, the majority of states continued to recognize a person's right to use deadly force to defend against deadly force without retreating.²⁸ Prior to Florida amending its self-defense statute to abolish its common law duty to retreat, the majority of states recognized a person's right to use deadly force to defend against deadly force without first retreating.²⁹ Today, an

26. The castle doctrine is based on the concept that a man's home is his castle, and he should not be required to retreat in his own home. Additionally, a person's home is his sanctuary and should be his safe place. *Weiland v. State*, 732 So. 2d 1044, 1049–50 (Fla. 1999) (quoting *People v. Tomlins*, 107 N.E. 496, 497 (N.Y. 1914)).

27. *Tomlins*, 107 N.E. at 497.

28. *Weiland*, 732 So. 2d at 1051.

29. MO. ANN. STAT. § 563.031 (West 2012); TENN. CODE ANN. § 39-11-611(b)(1) (2014); UTAH CODE ANN. § 76-2-402(3) (LexisNexis 2012); *State v. Jackson*, 382 P.2d 229, 232 (Ariz. 1963); *People v. Hughes*, 237 P.2d 64, 67–68 (Cal. Dist. Ct. App. 1951); *Cassels v. People*, 92 P.3d 951, 956 (Colo. 2004); *Johnson v. State*, 315 S.E.2d 871, 872 (Ga. 1984); *State v. McGreevey*, 105 P. 1047, 1051 (Idaho 1909); *People v. Robinson*, 302 N.E.2d 228, 231 (Ill. App. Ct. 1973); *Runyan v. State*, 57 Ind. 80, 82–83 (Ind. 1877); *State v. Scobee*, 748 P.2d 862, 867 (Kan. 1988); *Oliver v. Commonwealth*, 33 S.W.2d 684, 685 (Ky. Ct. App. 1930); *People v. Riddle*, 649 N.W.2d 30, 35 (Mich. 2002); *Cook v. State*, 467 So. 2d 203, 210 (Miss. 1985); *State v. Bartlett*, 71 S.W. 148, 151 (Mo. 1902); *State v. Merk*, 164 P. 655, 658 (Mont. 1917); *Culverson v. State*, 797 P.2d 238, 240–41 (Nev. 1990); *State v. Horton*, 258 P.2d 371, 373 (N.M. 1953); *State v. Allen*, 541 S.E.2d 490, 497 (N.C. Ct. App. 2000); *Kirk v. Territory*, 60 P. 797, 806 (Okla. 1900); *State v. Rader*, 186 P. 79, 85 (Or. 1919); *State v. Burtzloff*, 493 N.W.2d 1, 7–8 (S.D. 1992); *State v. Renner*, 912 S.W.2d 701, 704 (Tenn. 1995); *State v. Hatcher*, 706 A.2d 429, 435 (Vt. 1997); *Gilbert v. Commonwealth*, 506 S.E.2d 543, 546 (Va. Ct. App. 1998); *State v. Redmond*, 78 P.3d 1001, 1003 (Wash. 2003); *State v. Evans*, 10 S.E. 792, 793 (W. Va. 1890); *State v. Wenger*, 593 N.W.2d 467, 471 (Wis. Ct. App. 1999).

even larger majority of states recognize a person's right to use deadly force in self-defense without first retreating.³⁰

Because of the American tradition of not retreating before appropriately defending one's life from an attacker's use of deadly force, it is puzzling that so much attention was directed at Florida when the state legislature decided to finally join the majority and abolish the duty to retreat. While Florida did strengthen its protections for law-abiding citizens, residents, and visitors who find themselves defending their lives against deadly force, it did not drastically change the parameters, requirements, or components of deadly force as many try to argue. The next part of this Article discusses the generally accepted components of justifiable use of deadly force, Florida's and other state's reaffirmation of the traditional requirements for using deadly force, and the additional protections many states now recognize.

30. ALA. CODE § 13A-3-23 (West, Westlaw through Act 2015-559 of the 2015 Reg., First Spec. and Second Spec. Sess.); ALASKA STAT. § 11.81.335 (2012); ARIZ. REV. STAT. ANN. § 13-405 (2010 & Supp. 2012); FLA. STAT. ANN. §§ 776.012 to -776.013 (West 2010 & Supp. 2015); GA. CODE ANN. § 16-3-23.1 (2011); IND. CODE § 35-41-3-2 (West, Westlaw through P.L. 1-2016 and P.L. 2-2016); KAN. STAT. ANN. § 21-5222 (West, Westlaw through 2015 Reg. Sess.); KY. REV. STAT. ANN. § 503.050 (LexisNexis 2008); LA. STAT. ANN. § 14:20 (West, Westlaw through 2015 Reg. Sess.); MICH. COMP. LAWS ANN. § 780.972 (West 2007); MISS. CODE ANN. § 97-3-15 (2006); MONT. CODE ANN. § 45-3-110 (2011); NEV. REV. STAT. ANN. § 200.120 (West, Westlaw through 2015 Reg. & Spec. Sess.); N.H. REV. STAT. ANN. § 627:4 (LexisNexis 2007 & Supp. 2012); N.C. GEN. STAT. § 14-51.3 (2011); OKLA. STAT. ANN. tit. 21, § 1289.25 (West Supp. 2013); S.C. CODE ANN. § 16-11-440 (Supp. 2012); S.D. CODIFIED LAWS § 22-18-4 (2006); TENN. CODE ANN. § 39-11-611 (2014); TEX. PENAL CODE ANN. § 9.32 (West 2011); UTAH CODE ANN. § 76-2-402 (LexisNexis 2012); *Cassels*, 92 P.3d at 956; *People v. Manley*, 584 N.E.2d 477, 491 (Ill. App. Ct. 1991); *Bartlett*, 71 S.W. at 151; *Territory v. Gonzales*, 68 P. 925, 932 (N.M. 1902); *State v. Sandoval*, 156 P.3d 60, 64 (Or. 2007); *Foote v. Commonwealth*, 396 S.E.2d 851, 855 (Va. Ct. App. 1990); *State v. Cushing*, 45 P. 145, 145-46 (Wash. 1896); *State v. Dinger*, 624 S.E.2d 572, 576-77 (W. Va. 2005); *Wenger*, 539 N.W.2d at 471; N.M. UNIF. JURY INSTRUCTIONS CRIMINAL § 14-5190 (2015); JUDICIAL COUNCIL OF CAL. CRIMINAL JURY INSTRUCTIONS § 505 (2012); IDAHO CRIMINAL JURY INSTRUCTIONS § 1519 (2010).

III. ANALYSIS OF THE LAW OF SELF-DEFENSE

A. *An Overview of the Law of Self-Defense Using Deadly Force*

The legal justification for self-defense of any kind rests upon the premise that the defender has “no opportunity to resort to the law for his defense.”³¹ Blackstone and Locke espoused this same justification for use of deadly force in self-defense.³² This premise could not be any truer than when one is confronted by an assailant about to use deadly force against a law-abiding person. Just as the basic justification for the use of force in self-defense is recognized in every state in the United States,³³ the basic components of the justified use of deadly force are found in all states with slight variations in wording or emphasis. Those components are proportionality, necessity, and reasonable belief.³⁴

The most fundamental component required for using deadly force in self-defense is proportionality. A person must be confronted with deadly force before using deadly force.³⁵ All fifty states require proportionality before defending with deadly force.³⁶

31. WAYNE R. LAFAVE, *CRIMINAL LAW* 539 (4th ed. 2003).

32. See BLACKSTONE, *supra* note 10, at *182; LOCKE, *supra* note 18, at 107.

33. See DRESSLER, *supra* note 1, at 223.

34. See *id.* at 224.

35. See sources cited *supra* note 2.

36. ALA. CODE § 13A-3-23 (West, Westlaw through Act 2015-559 of the 2015 Reg., First Spec. and Second Spec. Sess.); ALASKA STAT. § 11.81.335; ARIZ. REV. STAT. ANN. § 13-405 (2010 & Supp. 2012); ARK. CODE ANN. § 5-2-607 (West, Westlaw through 2015 Reg. & 1st Ex. Sess.); CAL. PENAL CODE § 197 (West 2008); COLO. REV. STAT. § 18-1-704 (2012); CONN. GEN. STAT. ANN. § 53a-19 (West 2012); DEL. CODE ANN. tit. 11, § 464 (2007); FLA. STAT. ANN. §§ 776.012 to -776.013 (West 2010 & Supp. 2015); GA. CODE ANN. § 16-3-21 (2011); HAW. REV. STAT. ANN. § 703-304 (LexisNexis 2007); IDAHO CODE § 18-4009 (2004); 720 ILL. COMP. STAT. ANN. 5/7-1 (West 2002 & Supp. 2013); IND. CODE 35-41-3-2 (West, Westlaw through P.L. 1-2016 and P.L. 2-2016); IOWA CODE ANN. § 704.1 (West 2003); KAN. STAT. ANN. § 21-5222 (West, Westlaw through 2015 Reg. Sess.); KY. REV. STAT. ANN. § 503.050 (LexisNexis 2008); LA. STAT. ANN. § 14:20 (West, Westlaw through 2015 Reg. Sess.); ME. REV. STAT. ANN. tit. 17A, § 108 (2006 & Supp. 2012); MICH. COMP. LAWS ANN. § 780.972 (West 2007); MINN. STAT. ANN. § 609.065 (West 2009); MISS. CODE ANN. § 97-3-15 (West, Westlaw through 2015 1st Reg. Sess.); MO. ANN. STAT. § 563.031 (West 2012); MONT. CODE ANN. § 45-3-102 (2011); NEB. REV.

This includes the states that do not require a person to retreat before resorting to deadly force—the so-called “stand-your-ground” states.³⁷ It is important to remember that deadly force does not *only* mean force involving a firearm, knife, or other traditional weapon. Depending on the size, age, sex, and health of the aggressor and the defender, the number of assailants, and the violent nature of an attack, deadly force, including use of a weapon, can be justified when confronting an unarmed assailant or attacker.³⁸

STAT. § 28-1409 (2008); NEV. REV. STAT. ANN. § 200.160 (LexisNexis 2012); N.H. REV. STAT. ANN. § 627:4 (LexisNexis 2007 & Supp. 2012); N.J. STAT. ANN. § 2C:3-4 (West 2005); N.M. STAT. ANN. § 30-2-7 (West, Westlaw through 2015 First Spec. Sess.); N.Y. PENAL LAW § 35.15 (McKinney 2009); N.C. GEN. STAT. § 14-51.3 (2011); N.D. CENT. CODE § 12.1-05-07 (2012); OKLA. STAT. ANN. tit. 21, § 733 (West, Westlaw through 2015 First Sess.); OR. REV. STAT. § 161.219 (2011); 18 PA. STAT. AND CONS. STAT. ANN. § 505 (West 1998 & Supp. 2013); S.C. CODE ANN. § 16-11-440 (Supp. 2012); S.D. CODIFIED LAWS §§ 22-16-34, 22-16-35 (2006); TENN. CODE ANN. § 39-11-611 (2014); TEX. PENAL CODE ANN. § 9.32 (West 2011); UTAH CODE ANN. § 76-2-402 (LexisNexis 2012); VT. STAT. ANN. tit. 13, § 2305 (2009); WASH. REV. CODE ANN. § 9A.16.050 (West Supp. 2013); W. VA. CODE § 55-7-22 (LexisNexis 2008); WIS. STAT. ANN. § 939.48 (West Supp. 2012); *Christian v. State*, 951 A.2d 832 (Md. 2008); *Commonwealth v. Haith*, 894 N.E.2d 1122, 1128 (Mass. 2008); *State v. Hanes*, 783 A.2d 920, 925–26 (R.I. 2001); *Gilbert v. Commonwealth*, 506 S.E.2d 543, 547 (Va. Ct. App. 1998); VA. PRACTICE JURY INSTRUCTIONS §§ 63.1, 63.6 (2015); WYO. PATTERN JURY INSTRUCTION § 8.02 (2014); MD. STATE BAR ASS’N CRIMINAL PATTERN JURY INSTRUCTIONS § 5:07 (2013); 2 CR OHIO JURY INSTRUCTIONS § 417.27 (2008); VT. BAR ASS’N CRIMINAL JURY INSTRUCTION § 111 (2005).

37. ALA. CODE § 13A-3-23; ALASKA STAT. § 11.81.335; ARIZ. REV. STAT. ANN. § 13-405; CAL. PENAL CODE § 197; COLO. REV. STAT. § 18-1-704; FLA. STAT. ANN. §§ 776.012 to –776.013; GA. CODE ANN. § 16-3-21; IDAHO CODE § 18-4009; 720 ILL. COMP. STAT. ANN. 5/7-1; IND. CODE 35-41-3-2; KAN. STAT. ANN. § 21-5222; KY. REV. STAT. ANN. § 503.050; LA. REV. STAT. ANN. § 14:20; MICH. COMP. LAWS ANN. § 780.972; MISS. CODE ANN. § 97-3-15; MO. ANN. STAT. § 563.031; MONT. CODE ANN. § 45-3-102; NEB. REV. STAT. § 28-1409; NEV. REV. STAT. ANN. § 200.160; N.H. REV. STAT. ANN. § 627:4; N.M. STAT. ANN. § 30-2-7; N.C. GEN. STAT. § 14-51.3; OKLA. STAT. ANN. tit. 21, § 733; OR. REV. STAT. § 161.219; S.D. CODIFIED LAWS §§ 22-16-34, 22-16-35; TENN. CODE ANN. § 39-11-611; TEX. PENAL CODE ANN. § 9.32; UTAH CODE ANN. § 76-2-402; VT. STAT. ANN. tit. 13, §2305; WASH. REV. CODE ANN. § 16.050; W. VA. CODE § 55-7-22; WIS. STAT. § 939.48; *Gilbert*, 506 S.E.2d at 547; VA. PRACTICE JURY INSTRUCTIONS §§ 63.1, 63.6 (2015).

38. See LAFAVE, *supra* note 31, at 542 (citing cases).

Proportionality does not mean equal weapon or instrument of defense but instead refers to the amount of force and the *likely* effect it can have.³⁹ Thus, an armed person can be justified in killing an unarmed person who uses or attempts to use deadly force against the armed person.⁴⁰

The next component of the justified use of deadly force in self-defense is necessity.⁴¹ The requirement of necessity includes confronting deadly force that is imminent or immediate.⁴² To use deadly force to defend against deadly force, the use of force must be necessary to prevent death or great bodily injury.⁴³ Such force is necessary if the danger of death or great bodily harm is imminent or immediate. All states require the necessity component either in their self-defense statutes or in their common law as expressed in the state jury instructions.⁴⁴ Some states specifically use

39. See *People v. Tomlins*, 107 N.E. 496, 497 (N.Y. 1914).

40. See *Weiland v. State*, 732 So. 2d 1044, 1049 (Fla. 1999); MISS. MODEL JURY INSTRUCTIONS: CRIMINAL § 2:14 (2011).

41. See DRESSLER, *supra* note 1, at 224.

42. *Id.*

43. *Id.*

44. ALA. CODE § 13A-3-23(a) (West, Westlaw through Act 2015-559 of the 2015 Reg., First Spec. and Second Spec. Sess.); ALASKA STAT. § 11.81.335(a) (2012); ARIZ. REV. STAT. ANN. § 13-405(a)(2) (2010 & Supp. 2012); ARK. CODE ANN. § 5-2-607(b) (West, Westlaw through 2015 Reg. & 1st Ex. Sess.); CAL. PENAL CODE § 197 (West 2008); COLO. REV. STAT. § 18-1-704(1) (2012); CONN. GEN. STAT. ANN. § 53a-19(a) (West 2012); DEL. CODE ANN. tit. 11, § 464(a) (2007); FLA. STAT. ANN. §§ 776.012 to -776.013(1) (West 2010 & Supp. 2015); GA. CODE ANN. § 16-3-21(a) (2011); HAW. REV. STAT. ANN. § 703-304(1) (LexisNexis 2007); IDAHO CODE § 18-4009 (2004); 720 ILL. COMP. STAT. ANN. 5/7-1 (West 2002 & Supp. 2013); IND. CODE ANN. 35-41-3-2 (West, Westlaw through P.L. 1-2016 and P.L. 2-2016); IOWA CODE ANN. § 704.1 (West 2003); KAN. STAT. ANN. 21-5222(a) (West, Westlaw through 2015 Reg. Sess.); KY. REV. STAT. ANN. § 503.050(1) (LexisNexis 2008); LA. STAT. ANN. § 14:20 (West, Westlaw through 2015 Reg. Sess.); ME. REV. STAT. ANN. tit. 17A, § 108 (2006 & Supp. 2012); MICH. COMP. LAWS ANN. § 780.972(1)(a) (West 2007); MINN. STAT. ANN. § 609.065 (West 2009); MISS. CODE ANN. § 97-3-15 (2006); MO. ANN. STAT. § 563.031(1) (West 2012); MONT. CODE ANN. § 45-3-102 (2011); NEB. REV. STAT. § 28-1409(1) (2008); NEV. REV. STAT. ANN. § 200.160 (LexisNexis 2012); N.H. REV. STAT. ANN. § 627:4(I) (LexisNexis 2007 & Supp. 2012); N.J. STAT. ANN. § 2C:3-4(a) (West 2005); N.M. STAT. ANN. § 30-2-7(a) (West, Westlaw through 2015 First Spec. Sess.); N.Y. PENAL LAW § 35.15(1) (McKinney 2009); N.C. GEN. STAT. ANN. § 14-51.3(a)

the word “necessity” or “necessary,” while others use “imminent” or “immediate.”⁴⁵ Several states, some of which impose a duty to retreat and some which do not, include both “necessary/necessity” and “imminent/immediate” to emphasize this basic and historic requirement for self-defense.⁴⁶ In jurisdictions that require retreat before defending against deadly force with deadly force, necessity is required even if not specifically legislated because if there is a place to which a person can safely retreat to escape from the threat of deadly force, using deadly force is not necessary.

The final component of justified use of deadly force is reasonable belief. The defender must reasonably believe deadly force is necessary to prevent the use of deadly force on the defender. This component includes both a subjective and objective requirement: the defender must *have* a reasonable belief that the force is necessary to defend against deadly force (subjective), and a reasonable person in the defender’s circumstances would also believe

(2011); N.D. CENT. CODE § 12.1-05-07(1) (2012); OKLA. STAT. ANN. tit. 21, § 733(A)(2) (West, Westlaw through 2015 First Sess.); OR. REV. STAT. § 161.219 (2011); 18 PA. STAT. AND CONS. STAT. ANN. § 505(a) (West 1998 & Supp. 2013); S.C. CODE ANN. § 16-11-440(C) (Supp. 2012); S.D. CODIFIED LAWS §§ 22-16-34, 22-16-35 (2006); TENN. CODE ANN. § 39-11-611(b)(1) (2014); TEX. PENAL CODE ANN. § 9.32 (West 2011); UTAH CODE ANN. § 76-2-402(1)(a), (b) (LexisNexis 2012); VT. STAT. ANN. tit. 13, § 2305(1) (2009); WASH. REV. CODE ANN. § 9A.16.050 (West Supp. 2013); W. VA. CODE § 55-7-22(a) (LexisNexis 2008); WIS. STAT. ANN. § 939.48 (West Supp. 2012); *Christian v. State*, 951 A.2d 832 (Md. 2008); *Commonwealth v. Haith*, 894 N.E.2d 1122, 1128 (Mass. 2008); *State v. Hanes*, 783 A.2d 920, 925–26 (R.I. 2001); *Gilbert v. Commonwealth*, 506 S.E.2d 543, 547 (Va. Ct. App. 1998); VA. PRACTICE JURY INSTRUCTIONS §§ 63.1, 63.6 (2015); WYO. PATTERN JURY INSTRUCTION § 8.02 (2014); MD. STATE BAR ASS’N CRIMINAL PATTERN JURY INSTRUCTIONS § 5:07 (2013); 2 CR OHIO JURY INSTRUCTIONS § 417.27 (2008); VT. BAR ASS’N CRIMINAL JURY INSTRUCTION § 111 (2005).

45. See sources cited *supra* note 44 (citing law in Alabama, Alaska, Arizona, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Mississippi, Montana, Nevada, New Hampshire, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin).

46. See sources cited *supra* note 44 (citing law in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Illinois, Iowa, Kansas, Louisiana, Michigan, Montana, Nevada, New Mexico, New York, North Carolina, Tennessee, Texas, Utah, and Wisconsin).

such force is necessary (objective).⁴⁷ For example, the Florida statute provides: “A person is justified in using or threatening to use deadly force if he or she reasonably believes that . . . such harm is necessary to prevent imminent death or great bodily harm.”⁴⁸ By using the term “reasonably believes,” the Florida statute requires the person actually believe the force is necessary, the subjective component, and the belief must be reasonable for a person in the defender’s situation, the objective component. The Florida standard criminal jury instructions clearly set out these two requirements:

In deciding whether defendant was justified in the use of deadly force, you must judge [him] [her] by the circumstances by which [he] [she] was surrounded at the time the force was used. The danger facing the defendant need not have been actual; however, to justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, the defendant must have actually believed that the danger was real.⁴⁹

The majority of states uses the same “reasonably believes” statutory language, thus requiring both a subjective and objective mental element for the justified use of deadly force.⁵⁰ Maryland and Wy-

47. See DRESSLER, *supra* note 1, at 225.

48. FLA. STAT. ANN. § 776.012(2) (West 2010 & Supp. 2015);

49. FLA. STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES (2010).

50. ALA. CODE § 13A-3-23(a) (West, Westlaw through Act 2015-559 of the 2015 Reg., First Spec. and Second Spec. Sess.); ALASKA STAT. § 11.81.335(a) (2012); ARK. CODE ANN. § 5-2-607(b) (West, Westlaw through 2015 Reg. & 1st Ex. Sess.); COLO. REV. STAT. § 18-1-704(1) (2012); CONN. GEN. STAT. ANN. § 53a-19(a) (West 2012); FLA. STAT. ANN. §§ 776.012 to – 776.013(1) (West 2010 & Supp. 2015); GA. CODE ANN. § 16-3-21(a) (2011); 720 ILL. COMP. STAT. ANN. 5/7-1 (West 2002 & Supp. 2013); IND. CODE 35-41-3-2 (West, Westlaw through P.L. 1-2016 and P.L. 2-2016); IOWA CODE ANN. § 704.1 (West 2003); KAN. STAT. ANN. 21-5222(a) (West, Westlaw through 2015 Reg. Sess.); LA. STAT. ANN. § 14:20 (West, Westlaw through 2015 Reg. Sess.);

oming do not include the “reasonably believes” language in their statutes, but the state jury instructions provide that the defendant must have the reasonable belief required by the majority.⁵¹ Massachusetts statutes do not impose the reasonable belief requirement, but the state common law does require a defendant reasonably believe deadly force is necessary before using such force.⁵²

A small minority of states seems to reject the subjective element of the reasonable belief component of self-defense and instead has adopted a strictly reasonable person objective standard.⁵³ The North Dakota and Vermont statutes do not include language indicating an objective or subjective standard requirement for the justified use of deadly force.⁵⁴ The North Dakota statute provides, “Deadly force is justified . . . [w]hen used in lawful self-defense if such force is *necessary* to protect the actor . . . against death, serious bodily injury, or the commission of a felony involving violence.”⁵⁵ Similarly, the Vermont statute provides, “If a person kills or wounds another . . . he or she shall be guiltless: (1) In the *just and necessary* defense of his or her own life.”⁵⁶ However, the jury

ME. REV. STAT. ANN. tit. 17A, § 108 (2006 & Supp. 2012); MICH. COMP. LAWS ANN. § 780.972(1)(a) (West 2007); MINN. STAT. ANN. § 609.065 (West 2009); MO. ANN. STAT. § 563.031(1) (West 2012); MONT. CODE ANN. § 45-3-102 (2011); N.H. REV. STAT. ANN. § 627:4(I) (LexisNexis 2007 & Supp. 2012); N.J. STAT. ANN. § 2C:3-4(a) (West 2005); N.Y. PENAL LAW § 35.15(1) (McKinney 2009); N.C. GEN. STAT. § 14-51.3(a) (2011); OKLA. STAT. ANN. tit. 21, § 733(A)(2) (West, Westlaw through 2015 First Sess.); OR. REV. STAT. § 161.219 (2011); S.C. CODE ANN. § 16-11-440(C) (Supp. 2012); TENN. CODE ANN. § 39-11-611(b)(1) (2014); TEX. PENAL CODE ANN. § 9.32 (West 2011); UTAH CODE ANN. § 76-2-402(1)(a), (b) (LexisNexis 2012); W. VA. CODE § 55-7-22(a) (LexisNexis 2008); WIS. STAT. ANN. § 939.48 (West Supp. 2012).

51. MD. STATE BAR ASS’N CRIMINAL PATTERN JURY INSTRUCTIONS § 5:07 (2013); WYO. PATTERN JURY INSTRUCTION § 8.08 (2004).

52. Commonwealth v. Haith, 894 N.E.2d 1122, 1128 (Mass. 2008).

53. ARIZ. REV. STAT. ANN. § 13-405(A)(2) (2010 & Supp. 2012); CAL. PENAL CODE § 198 (West 2008); I.C. § 18-4009(3) (2013); MISS. CODE ANN. § 97-3-15(1)(f) (2006); N.M. STAT. ANN. § 30-2-7(B) (West, Westlaw through 2015 First Spec. Sess.); S.D. CODIFIED LAWS § 22-16-35 (2006); WASH. REV. CODE ANN. § 9A.16.050(1) (West Supp. 2013).

54. N.D. CENT. CODE § 12.1-05-07 (2012); VT. STAT. ANN. tit. 13, § 2305 (2009).

55. N.D. CENT. CODE § 12.1-05-07(2)(b) (emphasis added).

56. VT. STAT ANN. tit. 13, § 2305 (emphasis added).

instructions of both states make it clear that the basic component of a reasonable belief is required.⁵⁷

In addition to justifying the use of deadly force when confronted with deadly force, the majority of state statutes provide deadly force may be used when the person against whom force is being used is committing a felony,⁵⁸ a felony involving force or violence,⁵⁹ a forcible felony as defined by statute,⁶⁰ or certain enumerated felonies.⁶¹ These statutes recognize the mere commission of certain felonies creates a risk of death or great bodily injury to victims, witnesses, or bystanders of such crimes. The purpose of all self-defense statutes is to protect law-abiding citizens from

57. VT. BAR ASS'N CRIMINAL JURY INSTRUCTION § 111 (2005); *see also* State v. Gagnon, 567 N.W.2d 807, 810 (N.D. 1997).

58. *See, e.g.*, MINN. STAT. ANN. § 609.065 (West 2009); MISS. CODE ANN. § 97-3-15 (2006); NEV. REV. STAT. ANN. § 200.120 (West, Westlaw through 2015 Reg. & Spec. Sess.); N.M. STAT. ANN. § 30-2-7 (West, Westlaw through 2015 First Spec. Sess.); S.D. CODIFIED LAWS §§ 22-16-34 to -35 (2006).

59. ARK. CODE ANN. § 5-2-607(a) (West, Westlaw through 2015 Reg. & 1st Ex. Sess.); CAL. PENAL CODE § 197 (West 2008); IDAHO CODE § 18-4009 (2004); KY. REV. STAT. ANN. § 503.055(3) (LexisNexis 2008); LA. STAT. ANN. § 14:20 (West, Westlaw through 2015 Reg. Sess.); N.D. CENT. CODE § 12.1-05-07; OR. REV. STAT. § 161.219(1) (2011); S.C. CODE ANN. § 16-11-420 (Supp. 2012); WASH. REV. CODE ANN. § 9A.16.050 (West Supp. 2013); *see also* JUDICIAL COUNCIL OF CAL. CRIMINAL JURY INSTRUCTIONS § 506 (2006) (interpreting CAL. PENAL CODE § 197 to mean a “forcible and atrocious” felony).

60. FLA. STAT. ANN. § 776.031 (West 2010 & Supp. 2015); GA. CODE ANN. § 16-3-21(a) (2011); 720 ILL. COMP. STAT. ANN. 5/7-1 (West 2002 & Supp. 2013); IND. CODE § 35-41-3-2 (West, Westlaw through P.L. 1-2016 and P.L. 2-2016); MO. ANN. STAT. § 563.031 (West 2012); MONT. CODE ANN. § 45-3-102 (2011); OKLA. STAT. ANN. tit. 21, § 733 (West, Westlaw through 2015 First Sess.); UTAH CODE ANN. § 76-2-402 (LexisNexis 2012).

61. ALA. CODE § 13A-3-23 (West, Westlaw through Act 2015-559 of the 2015 Reg., First Spec. and Second Spec. Sess.); ALASKA STAT. § 11.81.335 (2012); ARIZ. REV. STAT. ANN. § 13-411 (2010 & Supp. 2012); COLO. REV. STAT. § 18-1-704 (2012); CONN. GEN. STAT. § 53a-20 to -21 (West 2012); DEL. CODE ANN. title 11, § 464 (2007); HAW. REV. STAT. ANN. § 703-3-4 (LexisNexis 2007); ME. REV. STAT. ANN. tit. 17A, § 108 (2006 & Supp. 2012); NEB. REV. STAT. § 28-1409 (2008); N.H. REV. STAT. ANN. § 627:4 (LexisNexis 2007 & Supp. 2012); N.Y. PENAL LAW § 35.15 (McKinney 2009); 18 PA. STAT. AND CONS. STAT. ANN. § 505 (West 1998 & Supp. 2013); 3 R.I. GEN. LAWS § 11-8-8 (2002); TEX. PENAL CODE ANN. § 9.32 (2011); VT. STAT. ANN. tit. 13, § 2305 (2009).

falling prey to the unlawful acts of assailants, attackers, or other criminals, and the additional justification for using deadly force when serious crimes are being committed is a necessary component of that protection.

The three basic components discussed above, along with the protections afforded those who are victims, witnesses, or bystanders of crime, serve as the foundational requirements for the justified use of deadly force. Unless the requirements are met, the use of deadly force in self-defense is not justified but is, instead, likely to be criminal. The law of all fifty states makes it clear that one cannot use deadly force against non-deadly force, a threat, or a verbal confrontation.⁶² A would-be assailant must be using or at-

62. ALA. CODE § 13A-3-23(a); ALASKA STAT. § 11.81.335(a); ARIZ. REV. STAT. ANN. § 13-405(a)(2) (2010 & Supp. 2012); ARK. CODE ANN. § 5-2-607(b); CAL. PENAL CODE § 197; COLO. REV. STAT. § 18-1-704(1); CONN. GEN. STAT. ANN. § 53a-19(a) (West 2012); DEL. CODE ANN. tit. 11, § 464(a); FLA. STAT. ANN. §§ 776.012 to -776.013(1) (West 2010 & Supp. 2015); GA. CODE ANN. § 16-3-21(a); HAW. REV. STAT. ANN. § 703-304(1); IDAHO CODE § 18-4009; 720 ILL. COMP. STAT. ANN. 5/7-1; IND. CODE 35-41-3-2; IOWA CODE ANN. § 704.1 (West 2003); KAN. STAT. ANN. § 21-5222(a) (West, Westlaw through 2015 Reg. Sess.); KY. REV. STAT. ANN. § 503.050(1) (LexisNexis 2008); LA. STAT. ANN. § 14:20 (West, Westlaw through 2015 Reg. Sess.); ME. REV. STAT. ANN. tit. 17, § 108; MICH. COMP. LAWS ANN. § 780.972(1)(a) (West 2007); MINN. STAT. ANN. § 609.065; MISS. CODE ANN. § 97-3-15 (2006); MO. REV. STAT. § 563.031(1); MONT. CODE ANN. § 45-3-102; NEB. REV. STAT. § 28-1409(1); NEV. REV. STAT. ANN. § 200.160 (LexisNexis 2012); N.H. REV. STAT. ANN. § 627:4(I); N.J. STAT. ANN. § 2C:3-4(a) (West 2005); N.M. STAT. ANN. § 30-2-7(a); N.Y. PENAL LAW § 35.15(1); N.C. GEN. STAT. § 14-51.3(a) (2011); N.D. CENT. CODE § 12.1-05-07(1); OKLA. STAT. ANN. tit. 21, § 733(A)(2) (West, Westlaw through 2015 First Sess.); OR. REV. STAT. § 161.219 (2011); 18 PA. STAT. AND CONS. STAT. ANN. § 505(a) (West 1998 & Supp. 2013); S.C. CODE ANN. § 16-11-440(C) (Supp. 2012); S.D. CODIFIED LAWS §§ 22-16-34, 22-16-35 (2006); TENN. CODE ANN. § 39-11-611(b)(1) (2014); TEX. PENAL CODE ANN. § 9.32 (West 2011); UTAH CODE ANN. § 76-2-402(1)(a), (b); VT. STAT. ANN. tit. 13, § 2305(1); WASH. REV. CODE ANN. § 16.050; W. VA. CODE § 55-7-22(a) (LexisNexis 2008); WIS. STAT. ANN. § 939.48 (West Supp. 2012); *Christian v. State*, 951 A.2d 832 (Md. 2008); *Commonwealth v. Haith*, 894 N.E.2d 1122, 1128 (Mass. 2008); *State v. Hanes*, 783 A.2d 920, 925-26 (R.I. 2001); *Gilbert v. Commonwealth*, 506 S.E.2d 543, 547 (Va. Ct. App. 1998); VA. PRACTICE JURY INSTRUCTIONS §§ 63.1, 63.6 (2015); WYO. PATTERN JURY INSTRUCTION § 8.02 (2014); MD. STATE BAR ASS'N CRIMINAL PATTERN JURY INSTRUCTIONS § 5:07 (2013); 2 CR OHIO JURY INSTRUCTIONS § 417.27 (2008); VT. BAR ASS'N CRIMINAL JURY INSTRUCTION § 111 (2005).

tempting to use deadly force, and deadly force must be necessary to prevent or repel that deadly force. Finally, the necessity to use deadly force must be based on the defender's reasonable belief, which will be determined by the circumstances in which the defender finds himself knowing what he knows. Whether in a retreat state or a non-retreat state, a killing in self-defense will be justified and, therefore, not criminal only when all the requirements of the law are met. Thus, if an unprovoked man yells to a potential victim standing by his car 100 feet away, "Your money or your life," the potential victim cannot pull a gun, shoot the would-be robber, and successfully claim self-defense in any state. In these limited facts, the force used is not necessary or proportional, and there are no facts to support a reasonable belief that the thief was about to use deadly force.

*B. Who Can and Who Cannot Defend Themselves
Using Deadly Force*

Every state, whether by statute or by common law, limits when an individual will be justified in using deadly force in a self-defense situation. Some statutory restrictions are based on the defender's actions or activities at the time he uses deadly force. All fifty states, including "stand your ground" states, prohibit aggressors and/or provokers from benefiting from self-defense laws, except in vary narrow circumstances that indicate the person claiming justification has clearly ceased being the aggressor.⁶³ Several

63. ALA. CODE § 13A-3-23; ALASKA STAT. § 11.81.335; ARIZ. REV. STAT. ANN. § 13-405 (2010 & Supp. 2012); ARK. CODE ANN. § 5-2-606 (2013); CAL. PENAL CODE § 197; COLO. REV. STAT. § 18-1-704; CONN. GEN. STAT. ANN. § 53a-19; DEL. CODE ANN. tit. 11, § 464; FLA. STAT. ANN. §§ 776.013 to -776.041 (West 2010 & Supp. 2015); GA. CODE ANN. § 16-3-21; HAW. REV. STAT. ANN. § 703-304; IDAHO CODE ANN. § 18-4009; 720 ILL. COMP. STAT. ANN. 5/7-4 (West 2002); IND. CODE 35-41-3-2; IOWA CODE ANN. § 704.6 (West 2003); KAN. STAT. ANN. § 21-5226 (West, Westlaw through 2015 Reg. Sess.); KY. REV. STAT. ANN. §§ 502.055, 502.060 (LexisNexis 2008); LA. STAT. ANN. §§ 14:19, 14:21 (West, Westlaw through 2015 Reg. Sess.); ME. REV. STAT. ANN. tit. 17A, § 108; MICH. COMP. LAWS ANN. § 780.972; MINN. STAT. ANN. § 609.065; MISS. CODE ANN. § 97-3-15 (2006); MO. ANN. STAT. § 563.031; MONT. CODE ANN. § 45-3-105 (2011); NEB. REV. STAT. § 28-1409; NEV. REV. STAT. ANN. § 200.120 (West, Westlaw through 2015 Reg. & Spec. Sess.); N.H. REV. STAT. ANN. § 627:4; N.J. STAT. ANN. § 2C:3-4; N.Y. PENAL LAW § 35.15; N.C. GEN. STAT. § 14-51.4; N.D. CENT. CODE § 12.1-05-03 (2012); OKLA.

states further restrict the justifiable use of deadly force to those who do not consent to force or violence and those who are not involved in combat by agreement or mutual combat.⁶⁴ Finally, many state statutes specifically deny the justification for use of deadly force if the user of such force is involved in criminal activity.⁶⁵ Thus, the use of deadly force is only justified if a person is not engaging in provocative, violent, or criminal behavior that created the necessity to use such force in self-defense.

C. Florida Joins the Majority and Others Follow

In 2005, Florida joined the majority of states by amending its self-defense laws to abolish its common law duty to retreat before using deadly force in self-defense. When it did, it became the first state whose no retreat law became characterized as a “stand

STAT. ANN. tit. 21, § 1289.25 (West Supp. 2013); OR. REV. STAT. § 161.215 (2011); 18 PA. STAT. AND CONS. STAT. ANN. § 505 (West 1998 & Supp. 2013); S.C. CODE ANN. § 16-11-420 (Supp. 2012); TENN. CODE ANN. § 39-11-611 (2014); TEX. PENAL CODE ANN. §§ 9.31, 9.32 (West 2011); UTAH CODE ANN. § 76-2-402; WIS. STAT. ANN. § 939.48; *State v. Turner*, 886 N.E.2d 280, 284–85 (Ohio Ct. App. 2008); *State v. Woods*, 374 N.W.2d 92, 97 (S.D. 1985); *State v. McGee*, 655 A.2d 729, 733 (Vt. 1995); *Foster v. Commonwealth*, 412 S.E.2d 198, 201–02 (Va. Ct. App. 1991); *State v. Riley*, 976 P.2d 624, 627–28 (Wash. 1999); N.M. UNIF. JURY INSTRUCTIONS CRIMINAL § 14-5190 (2015).

64. ALA. CODE § 13A-3-23; ALASKA STAT. § 11.81.335; ARIZ. REV. STAT. ANN. § 13-405; CAL. PENAL CODE § 197; COLO. REV. STAT. § 18-1-704; CONN. GEN. STAT. ANN. § 53a-19; GA. CODE ANN. § 16-3-21; IDAHO CODE ANN. § 18-4009; IND. CODE 35-41-3-2; NMRA, Crim. UJI 14-5191; N.Y. PENAL LAW § 35.15; N.D. CENT. CODE § 12.1-05-03; OR. REV. STAT. § 161.215; TENN. CODE ANN. § 39-11-611; UTAH CODE ANN. § 76-2-402.

65. ALA. CODE § 13A-3-23; ALASKA STAT. §§ 11.81.330, 11.81.335 (2012); ARIZ. REV. STAT. ANN. § 13-405; FLA. STAT. ANN. §§ 776.012, 77.031, 776.041 (West 2010 & Supp. 2015); GA. CODE ANN. § 16-3-21; 720 ILL. COMP. STAT. ANN. 5/7-4 (West 2002); IND. CODE § 35-41-3-2; IOWA CODE ANN. § 704.6; KAN. STAT. ANN. §§ 21-5226, 21-5230 (West, Westlaw through 2015 Reg. Sess.); KY. REV. STAT. ANN. §§ 502.055; LA. STAT. ANN. §§ 14:19, 14:20 (West, Westlaw through 2015 Reg. Sess.); MICH. COMP. LAWS ANN. § 780.961 (West 2007); MISS. CODE ANN. § 97-3-15 (2006); MO. ANN. STAT. § 563.031; MONT. CODE ANN. § 45-3-105; NEV. REV. STAT. ANN. § 200.120; N.C. GEN. STAT. § 14-51.4; OKLA. STAT. ANN. title 21, § 1289.25; 18 PA. STAT. AND CONS. STAT. ANN. § 505; TENN. CODE ANN. § 39-11-611; TEX. PENAL CODE ANN. §§ 9.31, 9.32; UTAH CODE ANN. § 76-2-402; W. VA. CODE ANN. § 55-7-22 (LexisNexis 2008); WIS. STAT. ANN. § 939.48.

your ground” statute.⁶⁶ Many commentators were quick to criticize the new law; however, other states soon followed Florida by adopting stronger self-defense laws.⁶⁷ Over the next few years, additional states joined Florida and passed similar statutes or milder versions.⁶⁸ States continue to review their laws regarding a person’s right to use deadly force in self-defense, and as recently as February 2015, the Iowa legislature proposed an amendment to its self-defense statute to eliminate a person’s duty to retreat; the amendment has been referred to the Judiciary Subcommittee.⁶⁹ Even states that impose a duty to retreat on a person defending himself began re-evaluating their self-defense laws. Ohio, a retreat state, expanded its castle doctrine in 2008 to include a person’s residence and vehicle.⁷⁰ Wyoming, another retreat state, revisited its self-defense laws that same year and created legal presumptions to protect those confronted with an intruder in their home or habitation.⁷¹

Prior to amending its statute in 2011, Wisconsin did not impose a statutory or common law duty to retreat; however, judges in effect created such a duty when they would instruct the jury as follows:

66. Elizabeth Chuck, *Florida Had First Stand Your Ground Law, Other States Followed in ‘Rapid Succession,’* NBC NEWS (July 18, 2013, 10:03 AM), <http://www.nbcnews.com/news/other/florida-had-first-stand-your-ground-law-other-states-followed-f6C10672364>.

67. ALA. CODE § 13A-3-23 (effective June 1, 2006); GA. CODE ANN. § 16-3-23.1 (2011) (effective July 1, 2006); IND. CODE § 35-41-3-2 (effective July 1, 2006); KY. REV. STAT. ANN. §§ 505.050, 503-055 (effective July 12, 2006); LA. STAT. ANN. §§ 14:19 to -14:20 (effective Aug. 15, 2006); MICH. COMP. LAWS ANN. §§ 768.21c, 780.951, 780.961, 780.972 (West 2007) (effective Oct. 1, 2006); MISS. CODE ANN. § 97-3-15 (effective July 1, 2006); S.C. CODE ANN. §§ 16-11-420 and 16-11-440 (Supp. 2012) (effective June 9, 2006).

68. TENN. CODE ANN. § 39-11-611 (effective May 22, 2007); TEX. PENAL CODE ANN. §§ 9.31, 9.32 (effective Sept. 1, 2007); W. VA. CODE ANN. § 55-7-22; NEV. REV. STAT. ANN. § 200.120 (effective Oct. 1, 2011; amended June 2, 2015); N.H. REV. STAT. ANN. § 627.4 (effective Nov. 13, 2011); N.C. GEN. STAT. §§ 14-51.2 to -51.4 (2011) (effective Dec. 1, 2011); WIS. STAT. ANN. § 939.48 (effective Dec. 21, 2011).

69. S.B. 137, 86th Gen. Assemb., Reg. Sess. (Iowa 2015).

70. OHIO REV. CODE ANN. § 2901.09 (LexisNexis 2010) (effective Sept. 9, 2008).

71. WYO. STAT. ANN. § 6-2-602 (2013) (effective July 1, 2008).

There is no duty to retreat. However, in determining whether the defendant reasonably believed the amount of force used was necessary to prevent or terminate the interference, you may consider whether the defendant had the opportunity to retreat with safety, whether such retreat was feasible, and whether the defendant knew of the opportunity to retreat.⁷²

As a result, in 2011, the Wisconsin legislature amended its self-defense statute to make it clear that a person does not have any duty to retreat and, therefore, the possibility of retreat is irrelevant by adding the following language: “the court may not consider whether the actor had an opportunity to flee or retreat before he or she used force.”⁷³ Additionally, the legislature created a conclusive presumption of reasonableness for those in their dwelling, motor vehicle, or place of business when an intruder unlawfully and forcibly enters.⁷⁴

In 2011, the Pennsylvania legislature also revisited its self-defense laws and, like Florida and states both before and after Florida, created legal presumptions that benefit those confronted with intruders unlawfully and forcibly entering their dwelling, residence, or occupied vehicle.⁷⁵ Pennsylvania stopped short of totally abolishing the duty to retreat but enacted what could be called a partial “stand your ground” statute by abolishing the duty to retreat and granting a law-abiding resident “the right to stand his ground and use force, including deadly force” if he has the right to be where he is, otherwise meets the requirements for use of deadly force, *and* the other person displays or uses a “firearm or replica of a firearm” or “any other weapon readily or apparently capable of lethal use.”⁷⁶

Florida’s statute has drawn particular attention and criticism perhaps because it was the first state to incorporate more of

72. *State v. Wenger*, 593 N.W.2d 467, 471 (Wis. Ct. App. 1999).

73. WIS. STAT. ANN. § 939.48 (West Supp. 2012) (effective Dec. 21, 2011).

74. *Id.*

75. 18 PA. STAT. AND CONS. STAT. ANN. § 505(b)(2.3) (West 1998 & Supp. 2013) (effective August 29, 2011).

76. *Id.*

the protections already enacted in other states or because of media coverage of high-profile cases, such as *State of Florida v. George Zimmerman*.⁷⁷ As a result, critics have repeatedly mischaracterized such statutes, calling them “shoot first” or “shoot first, ask questions later” laws.⁷⁸ Some have even said the statutes allow for retaliation.⁷⁹ Such characterizations are patently false and indicate a lack of understanding of the purpose of these statutes. As stated earlier, prior to Florida passing its new self-defense statute, the majority of states did not require a person to retreat before using deadly force to defend against deadly force.⁸⁰ Florida did not create or introduce a new concept into the long-established legal doctrine of self-defense.

D. Protections Afforded by “Stand Your Ground” Laws

In order to analyze so called “stand your ground” laws, it is necessary to identify which state statutes qualify as “stand your ground” statutes and which states would be considered “stand your ground” states because of the state’s common law regarding justified use of deadly force. It is difficult to categorize which statutes constitute “stand your ground” statutes because those so categorized by the media, critics, and commentators are not identical in their provisions or language. Critics of the 2005 Florida statutes,

77. See Brandon T. Wroblewski, Note, *Calling the Court of Public Opinion to Order: A Critical Analysis of State of Florida v. George Zimmerman*, 27 REGENT U. L. REV. 103 (2015). In the *Zimmerman* case, the defendant was charged with the first-degree murder of Trayvon Martin. *Id.* at 111. Zimmerman raised the defense of self-defense under Florida’s statute and was acquitted. *Id.* at 106. The case drew national attention and criticism, much of which was aimed at the Florida statute. See, e.g., Pete Williams & Tracy Connor, *Holder Speaks Out Against ‘Stand Your Ground’ Laws After Zimmerman Verdict*, NBSNEWS.COM (July 17, 2013, 11:13 AM), <http://www.nbcnews.com/news/other/holder-speaks-out-against-stand-your-ground-laws-after-zimmerman-f6C10654061>.

78. Christine Catalfamo, *Stand Your Ground: Florida’s Castle Doctrine for the Twenty-First Century*, 4 RUTGERS J.L. & PUB. POL’Y 504 (2007); Kavan Peterson, *More States Sanction Deadly Force*, STATELINE: THE PEW CENTER ON THE STATES (April 26, 2006), <http://web.archive.org/web/20110101085316/http://www.stateline.org/live/ViewPage.action?siteNodeId=136&languageID=1&contentId=107276>.

79. Peterson, *supra* note 78.

80. See *supra* note 29.

and others like them, began referring to such statutes as “stand your ground” laws in an attempt to cast such laws in a negative light;⁸¹ however, the Florida legislature did not enact any of the new statutes as a “stand your ground” law and did not include the words “stand your ground” in the titles of any of the new statutes enacted in 2005.⁸² The title of the statute that includes the “stand your ground” language is “Home protection; use of deadly force; presumption of fear of death or great bodily harm.”⁸³ At the time the statute was passed, the legislative history likewise does not refer to the statute as a “stand your ground” statute.⁸⁴ The Florida legislature did use the language “stand his or her ground” in the part of the statute that abolished the state common law duty to retreat.⁸⁵

Long before the Florida statute was enacted, various courts recognized and emphasized the long-standing majority view of no duty to retreat by using the term “stand your ground.”⁸⁶ In 1895, in *United States v. Beard*, the United States Supreme Court held the trial court committed reversible error when it instructed the jury that the defendant had a duty to retreat and posed the question, “Does the law hold a man who is violently and feloniously assaulted responsible for having brought such necessity upon himself on the sole ground that he failed to fly from his assailant when he might safely have done so?”⁸⁷ The Court answered the question in the negative and held:

[I]f the accused did not provoke the assault, and had at the time reasonable grounds to believe, and in good faith believed, that the deceased intended to take his life, or do him great bodily harm, he was not obliged to retreat, nor to consider whether he could safely retreat, but was entitled to *stand his ground*, and meet any attack . . . with such force as .

81. Catalfamo, *supra* note 78, at 523–24.

82. FLA. STAT. §§ 776.012, 776.013, 776.031 (2005) (amended 2014).

83. *Id.* § 776.013.

84. *Id.* §§ 776.012, 776.013, 776.031.

85. *Id.* § 776.013(3).

86. *See, e.g.*, *Beard v. United States*, 158 U.S. 550 (1895).

87. *Id.* at 561.

. . . were necessary to save his own life, or to protect him from great bodily injury.⁸⁸

Additionally, as reflected in its jury instructions regarding self-defense, New Mexico common law recognized a person's right to stand his ground and use deadly force in self-defense at least as early as 1902, long before Florida incorporated the language in its justified use of deadly force statute.⁸⁹ Likewise, California Jury Instruction 505 Justifiable Homicide: Self-Defense or Defense of Another uses the same language when emphasizing no duty to retreat and provides:

A defendant is not required to retreat. He or she is entitled to *stand his or her ground* and defend himself or herself and, if reasonably necessary, to pursue an assailant until the danger of (death/great bodily injury/_____ <insert forcible and atrocious crime>) has passed. This is so even if safety could have been achieved by retreating.⁹⁰

Similarly, Virginia common law has long recognized that a person who is without fault in bringing on the necessity for self-defense “need not retreat, but is permitted to *stand his ground* (emphasis added) and repel the attack by force, including deadly force, if it is necessary.”⁹¹ The courts used the language “stand his ground” to emphasize that the law did not require a person who was not at fault to retreat before using deadly force in self-defense. Even Florida courts before 2005 used the “stand his ground” language

88. *Id.* at 564 (emphasis added).

89. *See* N.M. UNIF. JURY INSTRUCTIONS CRIMINAL § 14-5190 (2015). “A person who is threatened with an attack need not retreat. In the exercise of his right of self defense, he may stand his ground and defend himself.” *Id.*; *see also* State v. Horton, 258 P.2d 371, 372–73 (N.M. 1953); Territory v. Gonzales, 68 P. 925, 932 (N.M. 1902).

90. JUDICIAL COUNCIL OF CAL. CRIMINAL JURY INSTRUCTIONS § 505 (2012) (emphasis added).

91. Foote v. Commonwealth, 396 S.E.2d 851, 855 (Va. Ct. App. 1990) (emphasis added) (citing McCoy v. Commonwealth, 99 S.E. 644 (Va. 1919)); *see also* Gilbert v. Commonwealth, 506 S.E.2d 543, 547 (Va. Ct. App. 1998).

when applying the castle doctrine exception to the duty to retreat.⁹² By using the language “stand his or her ground,”⁹³ the Florida legislature similarly highlighted its intent to join the majority and to abolish the state common law duty to retreat.

Even though the term “stand his or her ground” was used years before the Florida legislature passed the 2005 statute, commentators and critics seized upon the language in the Florida statute and began using the phrase “stand your ground” in a way that mischaracterized such statutes. At the same time, they seemed to ignore the history of the phrase and other states’ use of the phrase to emphasize no duty to retreat in their castle doctrines.

Fortunately for the citizens and residents of several states, the mischaracterizations and criticisms had no effect on their state legislatures. After Florida passed its justifiable use of deadly force statute in 2005, other state legislatures reviewed and revised their laws regarding justifiable use of deadly force.⁹⁴ Some states followed Florida and abolished the duty to retreat, while others modified their retreat provisions to expand their version of the castle doctrine or to provide protections for those justifiably using deadly force.⁹⁵ Some of the states that followed Florida’s lead and enact-

92. *Hedges v. State*, 172 So. 2d 824, 827 (Fla. 1965); *Pell v. State*, 122 So. 110, 116 (Fla. 1929).

93. FLA. STAT. ANN. §§ 776.012, 776.013, 776.031 (2010 & Supp. 2015).

94. MO. ANN. STAT. § 563.031 (West 2012); NEV. REV. STAT. ANN. § 200.120 (West, Westlaw through 2015 Reg. & Spec. Sess.); N.H. REV. STAT. ANN. § 627.4 (LexisNexis 2007 & Supp. 2012); N.C. GEN. STAT. §§ 14-51.2 to -51.4 (2011); N.D. CENT. CODE §§ 12.1-05-07, 12.1-05-07.1 (2012); OHIO REV. CODE ANN. § 2901.09 (LexisNexis 2010); 18 PA. STAT. AND CONST. STAT. ANN. § 505 (West 1998 & Supp. 2013); TENN. CODE ANN. § 39-11-611 (2014); TEX. PENAL CODE ANN. §§ 9.31, 9.32 (West 2011); WA. REV. CODE § 9A.16.050 (2009); W. VA. CODE ANN. § 55-7-22 (LexisNexis 2008); WIS. STAT. ANN. § 939.48 (West Supp. 2012); WYO. STAT. ANN. § 6-2-602 (2013); S.B. 137, 86th Gen. Assemb., Reg. Sess. (Iowa 2015).

95. MO. ANN. STAT. S.C. CODE ANN. § 16-11-440 (Supp. 2012) § 563.031; NEV. REV. STAT. § 200.120; N.H. REV. STAT. ANN. § 627.4; N.C. GEN. STAT. §§ 14-51.2 to -51.4; N.D. CENT. CODE §§ 12.1-05-07, 12.1-05-07.1; OHIO REV. CODE ANN. § 2901.09; 18 PA. STAT. AND CONST. STAT. § 505; TENN. CODE ANN. § 39-11-611; TEX. PENAL CODE ANN. §§ 9.31, 9.32; WA. REV. CODE § 9A.16.050; W. VA. CODE ANN. § 55-7-22; WIS. STAT. § 939.48; WYO. STAT. ANN. § 6-2-602; S.B. 137, 86th Gen. Assemb., Reg. Sess. (Iowa 2015).

ed what some call “stand your ground” statutes⁹⁶ did not even include the language “stand your ground.”⁹⁷

If “stand your ground” laws do not necessarily contain those words, are all states that do not impose a duty to retreat considered “stand your ground” states? As has already been discussed, the United States Supreme Court and other no-retreat states used the phrase “stand your ground” long before Florida passed its statute in 2005.⁹⁸ If all no-duty-to-retreat states are considered “stand your ground” states, there are thirty-three states that are “stand your ground” states.⁹⁹ Prior to 2007, one of those states,

96. ALA. CODE § 13A-3-23 (West, Westlaw through Act 2015-559 of the 2015 Reg., First Spec. and Second Spec. Sess.) (effective June 1, 2006); GA. CODE ANN. § 16-3-23.1 (effective July 1, 2006); IND. CODE § 35-41-3-2 (West, Westlaw through P.L. 1-2016 and P.L. 2-2016) (effective July 1, 2006); KY. REV. STAT. ANN. §§ 505.050, 503-055 (LexisNexis 2008) (effective July 12, 2006); LA. STAT. ANN. §§ 14:19–14:20 (West, Westlaw through 2015 Reg. Sess.) (effective Aug. 15, 2006); MICH. COMP. LAWS ANN. §§ 768.21c, 780.951, 780.961, 780.972 (West 2007) (effective Oct. 1, 2006); MISS. CODE ANN. § 97-3-15 (2006) (effective July 1, 2006); NEV. REV. STAT. § 200.120 (effective Oct. 1, 2011; amended June 2, 2015); N.H. REV. STAT. ANN. § 627.4 (effective Nov. 13, 2011); N.C. GEN. STAT. §§ 14-51.2 to –14-51.4 (effective Dec. 1, 2011); S.C. CODE ANN. §§ 16-11-420 and 16-11-440 (effective June 9, 2006); TENN. CODE ANN. § 39-11-611 (effective May 22, 2007); TEX. PENAL CODE ANN. §§ 9.31, 9.32 (effective Sept. 1, 2007); W. VA. CODE ANN. § 55-7-22 (effective Feb. 28, 2008); WIS. STAT. § 939.48 (effective Dec. 21, 2011).

97. ALASKA STAT. § 11.81.335 (2012); ARIZ. REV. STAT. ANN. § 13-405 (2010 & Supp. 2012); IND. CODE § 35-41-3-2; MISS. CODE ANN. § 97-3-15; S.D. CODIFIED LAWS § 22-18-4 (2006); TENN. CODE ANN. § 39-11-611; TEX. PENAL CODE ANN. § 9.32; W. VA. CODE ANN. § 55-7-22.

98. TENN. CODE ANN. § 39-11-611; UTAH CODE ANN. § 76-2-402 (LexisNexis 2012); *Gilbert v. Commonwealth*, 506 S.E.2d 543 (Va. Ct. App. 1998); *Beard v. United States*, 158 U.S. 550, 561–63 (1895); *State v. Jackson*, 382 P.2d 229, 232 (Ariz. 1963); *People v. Hughes*, 237 P.2d 64, 66 (Cal. Ct. App. 1951); *State v. McGreevey*, 105 P. 1047, 1051 (Idaho 1909); *State v. Scobee*, 748 P.2d 862, 867 (Kan. 1988); *People v. Riddle*, 649 N.W.2d 30, 35 (Mich. 2002); *State v. Sunday*, 609 P.2d 1188, 1195 (Mont. 1980); *Culverson v. State*, 797 P.2d 238, 240 (Nev. 1990); *State v. Horton*, 258 P.2d 371, 373 (N.M. 1953); *Kirk v. Territory*, 60 P. 797, 804 (Okla. 1900); *Bechtel v. State*, 840 P.2d 1, 12–13 (Okla. Crim. App. 1992); *State v. Rader*, 186 P. 79, 88 (Or. 1919); *State v. Burtzlaff*, 493 N.W.2d 1, 7 (S.D. 1992).

99. ALA. CODE § 13A-3-23; ALASKA STAT. § 11.81.335; ARIZ. REV. STAT. ANN. § 13-405; FLA. STAT. ANN. §§ 776.012, 776.013 (2010 & Supp. 2015); GA. CODE ANN. § 16-3-23.1 (2011); IND. CODE § 35-41-3-2; KAN. STAT.

Missouri, did not specifically state in its statute whether or not a person had a duty to retreat before using deadly force;¹⁰⁰ however, the common law of the state clearly recognized the state imposed no duty to retreat.¹⁰¹ Additionally, the Comment to the 1973 Proposed Code says, “Missouri . . . imposes no duty to retreat on the actor before he can resort to deadly force in self-defense.”¹⁰² In 2007, the Missouri legislature amended its self-defense statute to include an expanded castle doctrine and to specifically provide a person does not have a duty to retreat “from a dwelling, residence, or vehicle” or “from private property that is owned or leased” by the person.¹⁰³ While the statute again is silent as to whether there is a duty to retreat in other places, such as anywhere a person has a right to be, there is no reason to believe the Missouri common law rule of no duty to retreat has changed.¹⁰⁴

As stated earlier, in addition to the thirty-three no retreat states, the Pennsylvania legislature amended its self-defense statute in 2011 to provide a person is not required to retreat and recogniz-

ANN. § 21-5222 (West, Westlaw through 2015 Reg. Sess.); KY. REV. STAT. ANN. § 503.050 (LexisNexis 2008); LA. STAT. ANN. § 14:20 (West, Westlaw through 2015 Reg. Sess.); MICH. COMP. LAWS ANN. § 780.972 (West 2007); MISS. CODE ANN. § 97-3-15; MONT. CODE ANN. § 45-3-110 (2011); NEV. REV. STAT. ANN. § 200.120 (West, Westlaw through 2015 Reg. & Spec. Sess.); N.H. REV. STAT. ANN. § 627:4; N.C. GEN. STAT. § 14-51.3 (2011); OKLA. STAT. ANN. tit. 21, § 1289.25 (West Supp. 2013); S.C. CODE ANN. § 16-11-440 (Supp. 2012); S.D. CODIFIED LAWS § 22-18-4 (2006); TENN. CODE ANN. § 39-11-611; TEX. PENAL CODE ANN. § 9.32 (West 2011); UTAH CODE ANN. § 76-2-402 (LexisNexis 2012); *Cassels v. People*, 92 P.3d 951, 956 (Colo. 2004); *McGreevey*, 105 P. at 1051 (Idaho 1909); *People v. Manley*, 584 N.E.2d 477, 491 (Ill. App. Ct. 1991); *State v. Bartlett*, 71 S.W. 148, 151 (Mo. 1902); *Territory v. Gonzales*, 68 P. 925, 932 (N.M. 1902); *State v. Sandoval*, 156 P.3d 60, 64 (Or. 2007); *Foote v. Commonwealth*, 396 S.E.2d 851, 855 (Va. Ct. App. 1990); *State v. Cushing*, 45 P. 145, 145–46 (Wa. 1896); *State v. Dinger*, 624 S.E.2d 572, 576–77 (W. Va. 2005); *State v. Wenger*, 539 N.W.2d 467, 471 (Wis. Ct. App. 1999); N.M. UNIF. JURY INSTRUCTIONS CRIMINAL § 14-5190 (2015); JUDICIAL COUNCIL OF CAL. CRIMINAL JURY INSTRUCTIONS § 505 (2012); IDAHO CRIMINAL JURY INSTRUCTIONS § 1519 (2010).

100. MO. ANN. STAT. § 563.031 (West 2012).

101. *Bartlett*, 71 S.W. at 151.

102. MO. ANN. STAT. § 563.031.

103. *Id.*

104. *See Bartlett*, 71 S.W. at 148; *In re J.M.*, 812 S.W.2d 925, 932 (Mo. 1991).

es his right to “stand his ground” when defending against deadly force if the other person displays or uses a firearm, replica of a firearm, or “any other weapon readily or apparently capable of lethal use.”¹⁰⁵ The defender’s right to stand his ground exists wherever he “has a right to be.”¹⁰⁶ Clearly, even with its partial “stand your ground” statute, Pennsylvania does not adopt the view of the shrinking minority that law-abiding citizens should always retreat outside their home before defending themselves against deadly force.

Since it is difficult to tell which state self-defense laws commentators and critics consider “stand your ground” laws, and since commentators and critics have focused on the 2005 Florida statutory amendments when discussing “stand your ground” laws, the next section of this Article analyzes the Florida statute to discuss the protections afforded by Florida and other states that provide similar protections.

1. Recognition of the Long-Standing Right to Use Deadly Force to Protect Oneself Without First Retreating

Prior to 2005, the Florida statute regarding the use of deadly force in self-defense contained no language as to whether or not a person had a duty to retreat before using such force.¹⁰⁷ The Florida common law, however, did require a person to retreat before using deadly force in defense against deadly force.¹⁰⁸ Thus, when Florida enacted new statutes that abolished the common law duty to retreat, the new legislation represented a major change to the Florida self-defense laws. When the Florida legislature amended the state statutes regarding the justified use of deadly force in self-defense, Florida joined the majority of states that do not require law-abiding citizens, residents, and visitors to retreat before defending themselves against deadly force. This Article emphasizes this basic fact because eliminating the duty to retreat is the statutory change that drew the most criticism, mischaracterizations, and media attention when the new statute was proposed, being dis-

105. See 18 PA. STAT. AND CONS. STAT. ANN. § 505(b)(2.3) (West 1998 & Supp. 2013).

106. *Id.*

107. FLA. STAT. § 776.012 (2003) (amended 2005).

108. *Weiland v. State*, 732 So. 2d 1044, 1051 (Fla. 1999).

cussed, and finally enacted. Those criticisms and mischaracterizations are discussed below in Part V.

2. Presumptions under Florida's Home Protection Statute

In addition to abolishing the duty to retreat, the Florida legislature created protections for law-abiding citizens who find it necessary to use deadly force in self-defense.¹⁰⁹ The legislature created certain legal presumptions to protect people in their homes and vehicles when a would-be invader, burglar, robber, or assailant is entering or has entered "unlawfully and forcefully."¹¹⁰ Additionally, the legislature created two presumptions and granted immunity to those who meet the requirements of the statutes and justifiable use deadly force.¹¹¹ These provisions provide important protections to the citizens and residents of and visitors to Florida.

With regard to the legislated presumptions, Florida Statute section 776.013(1) addresses two of the basic components of self-defense using deadly force discussed earlier: proportionality and reasonable belief. That section provides a person's "reasonable fear of imminent peril of death or great bodily harm" is presumed under certain circumstances.¹¹² Specifically, the presumption arises if an intruder unlawfully and forcefully entered or is in the process of entering the defender's "dwelling, residence, or occupied vehicle."¹¹³ The presumption also arises if the person against whom deadly force is used "had removed or is attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle."¹¹⁴ The statute sets out a second requirement before the presumption is recognized. The person who uses deadly force in the above circumstances must know or have "reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred."¹¹⁵ If both of those

109. FLA. STAT. ANN. §§ 776.012, 776.013, 776.031 (West 2010 & Supp. 2015).

110. *Id.* § 776.013(1)(b).

111. *Id.* § 776.013; *see also id.* § 776.032 (providing immunity from criminal prosecution and civil action for justifiable use of force).

112. *Id.* § 776.013(1).

113. *Id.* § 776.013(1)(a).

114. *Id.*

115. *Id.* § 776.013(1)(b).

requirements are met, the person who used the deadly force is presumed to have a reasonable fear of imminent deadly force and justifiably defends himself. The statute clearly recognizes the sanctity of one's home and the vulnerability faced when in one's vehicle. It also protects people who find themselves victims in their homes and vehicles without having others who were not present to face the danger, i.e. police, prosecutors, judges, or jurors, later judge and determine the reasonableness of their fear.

It is important to note the presumption only arises if used in a "dwelling, residence, or occupied vehicle."¹¹⁶ These are the same places now often covered by the castle doctrine exception in retreat states.¹¹⁷ Additionally, the presumptions protect temporary residents and guests,¹¹⁸ an important protection in light of Florida's tourism industry. When considered in light of the circumstances under which the presumption arises, it provides important protections to people who could be victims of violent crimes committed by others unlawfully entering their home or vehicle. A person should not have to make a legal analysis regarding an intruder's intent when that intruder has or is attempting to unlawfully and forcibly enter his home. Even a brief delay to try to determine if the intruder is about to use deadly force could result in the death or unnecessary injury of the home's occupants. Without the presumption, as required by the proportionality component discussed earlier in Section III.A, a person could only use deadly force when

116. *Id.* § 776.013(1)(a).

117. ARK. CODE ANN. § 5-2-607(b) (West, Westlaw through 2015 Reg. & 1st Ex. Sess.) (dwelling or curtilage surrounding); CONN. GEN. STAT. ANN. § 53a-19(b) (West 2012) (dwelling or place of work); DEL. CODE ANN. tit. 11, § 464(e)(2) (2007) (dwelling or place of work); HAW. REV. STAT. ANN. § 703-304(5)(b) (LexisNexis 2007) (dwelling or work place); IOWA CODE ANN. § 704.1 (West 2003) (dwelling or place of business or employment); ME. REV. STAT. ANN. tit. 17A, § 108(2)(C)(3) (2006 & Supp. 2012) (dwelling); MASS. GEN. LAWS ANN. ch. 278, § 8A (West 2014) (dwelling); NEB. REV. STAT. § 28-1409(4)(b) (2008) (dwelling or place of work); N.J. STAT. ANN. § 2C:3-4 b(2)(b)(i) (West 2005) (dwelling); N.Y. PENAL LAW § 35-15 (McKinney 2009) (dwelling); N.D. CENT. CODE § 12.1-05-07 (2012) (dwelling, place of work, or occupied motor home or travel trailer); OHIO REV. CODE ANN. § 2901.09 (LexisNexis 2010) (residence or vehicle); 3 R.I. GEN. LAWS § 11-8-8 (2002); *State v. Carothers*, 594 N.W.2d 897 (Minn. 1999) (dwelling); *Miller v. State*, 67 P.3d 1191 (Wyo. 2003) (residence).

118. FLA. STAT. ANN. § 776.013(5)(a), (b) (West 2010 & Supp. 2015).

confronted with a deadly threat.¹¹⁹ This requirement is separate from the duty to retreat; therefore, even in states that recognize the castle doctrine exception to the retreat rule, the defending homeowner can only use deadly force when he is sure he is facing deadly force, even in his dwelling, residence, or occupied vehicle. Consequently, in castle doctrine states with no presumption as to a person's reasonable fear of imminent death or great bodily injury, a law-abiding person faced with an intruder in his home must determine whether or not the use of deadly force is necessary to prevent imminent death or great bodily harm before he can use deadly force in defense of himself and his family.¹²⁰ The castle doctrine, therefore, does not provide sufficient protections for people faced with a violent home invasion or any other criminal intrusion into their homes or "castles."

As discussed earlier, some states also allow a person to use deadly force if he reasonably believes the person is committing a felony, felony involving force or violence, forcible felony, or certain enumerated felonies.¹²¹ In the situation of a home intruder, the resident of the home still must analyze the situation to determine the intruder's purpose in invading his home. Most jurisdictions will more than likely not require a detailed analysis, but even a split second delay to assess the situation can result in disaster for a person confronted with an unknown intruder in his home. To protect potential victims in such situations, the Florida statute creates a second presumption which complements the first and deals with the intent of an intruder: "A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence."¹²² With the intent of a forceful intruder established by the presumption, a person suddenly confronted by such an intruder may use deadly force to defend himself and those with him. Again, this presumption benefits a law-abiding person confronted with an unlawful intruder. A potential victim does not have to try to determine the intruder's inten-

119. See *supra* note 108 and accompanying text.

120. *Id.*

121. See *supra* Part III.A.

122. FLA. STAT. ANN. § 776.013(4) (West 2010 & Supp. 2015).

tions before acting to protect himself and others in the home or vehicle.

Residents of states without presumptions like these in the Florida statute must choose between assessing the intruder's intent and purpose before defending himself and his family or risk possible prosecution if there are insufficient facts to determine if the requirements for the use of deadly force in self-defense are met. A judge or jury looking back at the circumstances with detached reflection will likely be unable to see the situation in the same way the potential victim would see it. Such Monday morning quarterbacking can lead to criminal prosecution, prison, and disaster for a person trying to protect himself or his family. The presumptions granted by the Florida statute, therefore, serve as valuable protections for Florida citizens, residents, and visitors when in their homes and vehicles.

To provide real protections for the law-abiding citizens, residents, and visitors in Florida, the legislature clearly intended for the presumptions in Florida Statute section 776.013 (2005) to be conclusive. The first rule of determining legislative intent is to look at the plain language of the statute itself.¹²³ Section 1 of the statute provides: "A person *is presumed* to have held a reasonable fear of imminent peril of death or great bodily harm."¹²⁴ The legislature did not say *may be presumed*, *can be presumed*, or *if not rebutted, is presumed*. Additionally, the staff analysis in the legislative history of the senate bill precursor to the enacted statute states: "Legal presumptions are typically rebuttable. The presumptions created by the committee substitute, however, appear to be conclusive."¹²⁵ There is no doubt the Florida legislature intended to create conclusive presumptions regarding a defender's reasonable belief and an intruder's intent under the circumstances required by the statute. In creating these conclusive presumptions, it is equally clear that the legislature intended to provide substantive protections for those within their homes and vehicles from would be assailants and criminals. If a person's home is truly his castle,

123. See *Bautista v. State*, 863 So. 2d 1180, 1185 (Fla. 2003).

124. FLA. STAT. ANN. § 776.013(1) (West 2010 & Supp. 2015) (emphasis added).

125. FLA. JUD. COMM., STAFF ANALYSIS, S. 2005-CS/CS/SB 436, 107th Sess., at 4 (Fla. 2005).

the protections afforded by the Florida statute more definitively establish a person's right to the uninterrupted peaceful enjoyment and sanctuary of that castle.

In addition to Florida, twenty-two states have created presumptions regarding a person's right to use deadly force in self-defense.¹²⁶ Six of those states require a person to retreat before using deadly force.¹²⁷ The majority of these states' presumptions are rebuttable.¹²⁸ However, like Florida, the Tennessee statute provides for a conclusive presumption: "Any person using force intended or likely to cause death or serious bodily injury within a residence, business, dwelling or vehicle *is presumed* to have held a reasonable belief of imminent death or serious bodily injury."¹²⁹ Wisconsin's statute also creates a conclusive presumption by providing "[T]he court . . . *shall presume* that the actor reasonably

126. ALA. CODE § 13A-3-23 (West, Westlaw through Act 2015-559 of the 2015 Reg., First Spec. and Second Spec. Sess.); ARIZ. REV. STAT. ANN. § 13-411 (Westlaw through 2015 1st Reg. Sess.); ARK. CODE ANN. § 5-2-620 (West, Westlaw through 2015 Reg. & 1st Ex. Sess.); CAL. PENAL CODE § 198.5 (West 2008); KAN. STAT. ANN. § 21-5224 (West, Westlaw through 2015 Reg. Sess.); KY. REV. STAT. ANN. § 503.055 (LexisNexis 2008); LA. STAT. ANN. § 14:20 (West, Westlaw through 2015 Reg. Sess.); MICH. COMP. LAWS ANN. § 780.951 (West 2007); MISS. CODE ANN. § 97-3-15 (2006); NEV. REV. STAT. ANN. § 41.095 (West, Westlaw through 2015 Reg. & Spec. Sess.); N.J. STAT. ANN. § 2C:3-4 (West 2005); N.C. GEN. STAT. § 14-51.2 (2011); OHIO REV. CODE ANN. § 2901.05 (LexisNexis 2010); OKLA. STAT ANN. tit. 21, § 1289.25 (West Supp. 2013); 18 PA. STAT. AND CONS. STAT. ANN. § 505 (West 1998 & Supp. 2013); R.I. GEN. LAWS § 11-8-8 (2002); S.C. CODE ANN. § 16-11-440 (Supp. 2012); TENN. CODE ANN. § 39-11-611 (2014); TEX. PENAL CODE ANN. § 9.32 (West 2011); UTAH CODE ANN. § 76-2-405 (LexisNexis 2012); WIS. STAT. ANN. § 939.48 (West Supp. 2012); WYO. STAT. ANN. § 6-2-602 (2013).

127. ARK. CODE ANN. § 5-2-620 (West, Westlaw through 2015 Reg. & 1st Ex. Sess.); N.J. STAT. ANN. § 2C:3-4; OHIO REV. CODE ANN. § 2901.05; 18 PA. STAT. AND CONS. STAT. ANN. § 505; R.I. GEN. LAWS § 11-8-8; WYO. STAT. ANN. § 6-2-602.

128. ARIZ. REV. STAT. ANN. § 13-411 (Westlaw through 2015 1st Reg. Sess.); ARK. CODE ANN. § 5-2-620; CAL. PENAL CODE § 198.5; KAN. STAT. ANN. § 21-5224; MICH. COMP. LAWS ANN. § 780.951 (West 2007); NEV. REV. STAT. ANN. § 41.095; N.C. GEN. STAT. § 14-51.2; OHIO REV. CODE ANN. § 2901.05; R.I. GEN. LAWS § 11-8-8; TEX. PENAL CODE ANN. § 9.32; UTAH CODE ANN. § 76-2-405 (LexisNexis 2012).

129. TENN. CODE ANN. § 39-11-611(c) (2014) (emphasis added).

believed that the force was necessary to prevent imminent death or great bodily harm . . .” if the statutory conditions are met.¹³⁰

As seen above, the protective presumptions’ application to the justified use of deadly force in self-defense appear in retreat and non-retreat states. Seven states created such protective presumptions long before Florida became a no retreat state in 2005 and included its presumptions in its justified use of deadly force statute.¹³¹ So why did the Florida statute draw so much attention and criticism? Florida joined the *majority* when it became a no-retreat state, and the presumptions in its justified use of deadly force statute did nothing that other states had not done before. As with the other states noted above, the presumptions provided by the Florida statute provide important protections for law-abiding residents of and visitors to the state and are not worthy of criticism.

3. Criminal and Civil Immunity for the Justified Use of Deadly Force

In addition to the legal presumptions designed to protect those justifiably using deadly force in self-defense, Florida, and other states, provide criminal and/or civil immunity for those justified in using deadly force. Before immunity is granted in these jurisdictions, the statutory requirements for justification must be met. Florida’s statute provides for immunity from both criminal prosecution and civil liability.¹³² Thirteen other states also grant criminal and/or civil immunity,¹³³ two of which are retreat states—

130. WIS. STAT. § 939.48 (emphasis added).

131. ARIZ. REV. STAT. ANN. § 13-411 (Westlaw through 2015 1st Reg. Sess.); ARK. CODE ANN. § 5-2-620; CAL. PENAL CODE § 198.5; NEV. REV. STAT. ANN. § 41.095; R.I. GEN. LAWS § 11-8-8 (2002); TENN. CODE ANN. § 39-11-611 (2014); UTAH CODE ANN. § 76-2-405 (LexisNexis 2012).

132. FLA. STAT. ANN. § 776.032 (Westlaw through Ch. 232 1st Reg. Sess.).

133. ALA. CODE § 13A-3-23(d) (West, Westlaw through Act 2015-559 of the 2015 Reg., First Spec. and Second Spec. Sess.); ARK. CODE ANN. § 5-2-621 (West, Westlaw through 2015 Reg. & 1st Ex. Sess.); DEL. CODE ANN. tit. 11, § 466(d) (2007); IDAHO CODE § 19-202A (2004); 720 ILL. COMP. STAT. ANN. 5/7-1(b) (West 2002 & Supp. 2013); IND. CODE § 35-41-3-2(c) (West, Westlaw through P.L. 1-2016 and P.L. 2-2016); MISS. CODE ANN. § 97-3-15(5)(b) (2006); N.C. GEN. STAT. § 14-51.2(e) (2011); OKLA. STAT. ANN. tit. 21, § 1289.25(F) (West Supp. 2013); S.C. CODE ANN. § 16-11-450 (Supp. 2012);

Arkansas and Delaware.¹³⁴ The statutes in Idaho, Indiana, and Washington provide that a person justified in using deadly force will not face “legal jeopardy of any kind” and have provided this broad immunity before Florida granted immunity in its statute in 2005.¹³⁵ Other states granting statutory immunity prior to Florida include Arkansas, Delaware, and Illinois.¹³⁶

Since Florida is not the first state to grant immunity to those justified in using deadly force, the motivation for criticism and mischaracterization cannot logically arise from these protections. Likewise, such protections do not render the Florida statute a “stand your ground” statute. As with the presumptions legislated in many states, the immunity granted by Florida and other states provide important protections for law-abiding citizens and residents.

IV. CURRENT STATUS OF AND POLICY BEHIND THE LAW OF SELF-DEFENSE USING DEADLY FORCE

Since its founding, this country has recognized a person’s fundamental right to life and liberty.¹³⁷ This right includes the right to personal autonomy, security, and safety and is recognized in numerous ways in the laws of all fifty states. Criminal and civil laws prohibiting battery recognize the sanctity of a person’s body and the right to be free from unwanted and illegal interference. Laws regarding the use of self-defense also recognize these same rights and the value of human life. As stated earlier, all fifty states recognize a person’s right to defend himself by using force, including deadly force, under certain circumstances and to be secure in his own home. To emphasize the importance of these rights, some

TENN. CODE ANN. § 39-11-622 (2014); TEX. CIVIL PRACTICE AND REMEDIES CODE ANN. § 83.001 (Westlaw through 2015 Reg. Sess.); WASH. REV. CODE ANN. § 9A.16.110 (West 2009).

134. ARK. CODE ANN. § 5-2-621; DEL. CODE ANN. Title 11, § 466(d).

135. IDAHO CODE § 19-202A; IND. CODE § 35-41-3-2; WASH. REV. CODE ANN. § 9A.16.110.

136. ARK. CODE ANN. § 5-2-621 (West, Westlaw through 2015 Reg. Sess. & 2015 1st Ex. Sess.); DEL. CODE ANN. title 11, § 464 (2007); 720 ILL. COMP. STAT. ANN. 5/7-1 (West 2002 & Supp. 2013).

137. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

state legislatures have reiterated the state's commitment to protecting its citizens' right to self-defense and the sanctity of their home.

In 1981, the Arkansas legislature recognized the fundamental nature of a person's right to defend himself, especially in his own home, when it included the following language as part of one of its self-defense statutes:

The right of an individual to defend himself or herself and the life of a person or property in the individual's home against harm, injury, or loss by a person unlawfully entering or attempting to enter or intrude into the home is reaffirmed as a fundamental right to be preserved and promoted as a public policy in this state.¹³⁸

The legislature also created a presumption that any force used to accomplish the purpose in the section quoted above would be lawful and necessary force.¹³⁹ To further make sure the policy stated would be followed, the legislature mandated that the "section shall be strictly complied with by the court and an appropriate instruction of this public policy shall be given to a jury sitting in trial of criminal charges brought in connection with this public policy."¹⁴⁰

In 1985, the Colorado legislature similarly recognized a person's right to safety in his own home: "The general assembly hereby recognizes that the citizens of Colorado have a right to expect absolute safety within their own homes."¹⁴¹ In the same statute, the legislature created criminal and civil immunity for those justifiably using deadly force in their home.¹⁴²

In 2012, the Indiana legislature emphasized the right of its citizens to feel secure in their homes but went further and recognized the importance of its citizens' right to defend themselves anywhere:

138. ARK. CODE ANN. § 5-2-620(a) (West, Westlaw through 2015 Reg. & 1st Ex. Sess.).

139. *Id.* at (b).

140. *Id.* at (c).

141. COLO. REV. STAT. § 18-1-704.5(1) (2012).

142. *Id.* at §§ (3), (4).

In enacting this section, the general assembly finds and declares that it is the policy of this state to recognize the unique character of a citizen's home and to ensure that a citizen feels secure in his or her own home against unlawful intrusion by another individual or a public servant. By reaffirming the long standing right of a citizen to protect his or her home against unlawful intrusion, however, the general assembly does not intend to diminish in any way the other robust self-defense rights that citizens of this state have always enjoyed. Accordingly, the general assembly also finds and declares that it is the policy of this state that people have a right to defend themselves and third parties from physical harm and crime. The purpose of this section is to provide the citizens of this state with a lawful means of carrying out this policy.¹⁴³

This declaration came after the legislature enacted its no duty to retreat or "stand your ground" law in 2006 and after critics and commentators had excoriated Florida for strengthening its citizens' right to defend themselves from physical harm and crime. As if to answer critics of the Florida statute, Indiana chose to declare its public policy ensuring their citizens the right to self-defense in the statute itself, not just in its legislative history.

Oklahoma passed its version of a "stand your ground" statute in 2006, which included the creation of Florida-type legal presumptions to provide additional protections in one's home.¹⁴⁴ The legislature expanded those protections in 2011, when it granted the same presumptions in one's "place of business."¹⁴⁵ Additionally, the legislature included the following in the first section of the statute: "The Legislature hereby recognizes that the citizens of the State of Oklahoma have a right to expect absolute safety within their own homes or places of business."¹⁴⁶

143. IND. CODE § 35-41-3-2(a) (West, Westlaw through P.L. 1-2016 and P.L. 2-2016).

144. OKLA. STAT. ANN. tit. 21, § 1289.25 (West 2002) (amended 2011).

145. OKLA. STAT. ANN. tit. 21, § 1289.25 (West Supp. 2013).

146. *Id.*

In 2006, the South Carolina General Assembly amended the state's self-defense statute and devoted a full section of the new law to reiterate its intent and findings behind what some may call a "stand your ground" statute.¹⁴⁷ In section A, the legislature indicated its intent to "codify the common law Castle Doctrine,"¹⁴⁸ but in fact went much further in recognizing the rights of law-abiding citizens. The remainder of the statute provides:

(B) The General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.

(C) The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed.

(D) The General Assembly finds that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.

(E) The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.¹⁴⁹

In conjunction with the above statute, the General Assembly created protective presumptions similar to those adopted by Florida and other states¹⁵⁰ and granted both criminal and civil immunity to those who justifiably use deadly force in self-defense.¹⁵¹

147. S.C. CODE ANN. § 16-11-420 (Supp. 2012).

148. *Id.*

149. *Id.*

150. *Id.* § 16-11-440 (Supp. 2012).

151. *Id.* § 16-11-450 (Supp. 2012).

These specific legislative pronouncements clearly reflect the recognition of the rights of law-abiding citizens, residents, and visitors to be secure in their persons, homes, businesses, and vehicles. They recognize this country's long-standing commitment to the rights of the people to be free from interference by criminals and others seeking to do them or their property harm. While other states have not spelled out this policy in their self-defense statutes, the same policy is reflected in the majority of states that have adopted a no-duty-to-retreat, or "stand your ground," justifiable use of deadly force statutory scheme.

If "stand your ground" states do not require a person to retreat before using deadly force to defend against deadly force, a large majority of states are "stand your ground" states. As stated earlier, thirty-three states do not impose a duty to retreat before defending against deadly force.¹⁵² Of the seventeen retreat states, over half limit the places or circumstances under which a person still has a duty to retreat before using deadly force.¹⁵³ Additionally, none of the retreat states requires a person to retreat if he cannot do so with complete safety or if retreating risks death or serious bodily injury.¹⁵⁴ While the requirement that one retreat only if he

152. *See supra* note 99.

153. ARK. CODE ANN. § 5-2-607(b) (West, Westlaw through 2015 Reg. & 1st Ex. Sess.) (dwelling and surrounding curtilage); CONN. GEN. STAT. ANN. § 53a-19(b) (West 2012) (dwelling or place of work); DEL. CODE ANN. tit. 11, § 464(e)(2) (2007) (dwelling or place of work); HAW. REV. STAT. ANN. § 703-304(5)(b) (LexisNexis 2007) (dwelling or work place); IOWA CODE ANN. § 704.1 (West 2003) (dwelling or place of business or employment); NEB. REV. STAT. § 28-1409(4)(b) (2008) (dwelling or place of work); OHIO REV. CODE ANN. § 2901.09 (LexisNexis 2010) (residence or vehicle); 18 PA. STAT. AND CONS. STAT. ANN. § 505 (West 1998 & Supp. 2013) (no duty to retreat in dwelling, place of work, or if other person uses a firearm or replica of a firearm or any other weapon readily or capable of lethal use).

154. ARK. CODE ANN. § 5-2-607; CONN. GEN. STAT. ANN. § 53a-19 (2015); DEL. CODE ANN. tit. 11, § 464; HAW. REV. STAT. ANN. § 703-304 (LexisNexis 2007); IOWA CODE ANN. § 704.1; ME. REV. STAT. ANN. tit. 17A, § 108 (2006 & Supp. 2012); NEB. REV. STAT. § 28-1409 (2008); N.J. STAT. ANN. § 2C:3-4 (West 2005); N.Y. PENAL LAW § 35.15 (McKinney 2009); N.D. CENT. CODE § 12.1-05-07 (2012); 18 PA. STAT. AND CONS. STAT. ANN. § 505 (West 1998 & Supp. 2013); *Burch v. State*, 696 A.2d 443, 458 (Md. 1997); *Commonwealth v. Pike*, 701 N.E.2d 951, 957 (Mass. 1998); *State v. Johnson*, 152 N.W.2d 529, 532 (Minn. 1967); *State v. Quarles*, 504 A.2d 473, 475 (R.I. 1986); *Garcia v. State*, 667 P.2d 1148, 1153 (Wyo. 1983).

can do so safely sounds reasonable, how does a person confronted, attacked, or assailed make such a determination in the few, at most, seconds he may have to protect his life? John Locke was correct when he said a person using force on another for any reason becomes an aggressor capable of injuring or even killing his victim.¹⁵⁵ To require such a victim to determine if he can safely retreat would be astonishingly difficult in the most dangerous situations and clearly ignores the victim's fundamental right to be personally secure and safe as expressed in the above-stated policies.

One of the most strict retreat states is Rhode Island. Although it is a retreat state that recognizes the castle doctrine, it only eliminates the duty to retreat pursuant to the doctrine if the person against whom deadly force is used is committing certain enumerated breaking and/or entering crimes.¹⁵⁶ Again, placing law-abiding citizens and residents in the position of determining if the proper felony is being committed before they defend themselves with deadly force in their own home creates an even more dangerous situation.

Currently, the vast majority of states recognizes a person's right to defend himself or herself appropriately against deadly force. The trend since Florida passed its comprehensive statutes in 2005 has been for state legislatures to re-examine their self-defense laws and to even the playing field for innocent law-abiding citizens, residents, and visitors in their states. While critics and commentators use the term "stand your ground" to disparage laws protecting innocent people confronted with criminals, the term has been used in this country long before 2005 to acknowledge a person's right to personal autonomy and safety and to be and remain where they have a right to be. Retreating very often increases the danger to a person attacked. Of course, retreating or trying to retreat may be all a person can do, especially in those states that limit a person's right to carry a firearm or other weapon.

Since the overwhelming majority of states and citizens of the United States believe a person has a right to fully defend himself without retreating and since that right is embedded in this country's founding and history, why has this right come under such an onslaught of attacks since Florida joined the majority?

155. *See supra* note 18.

156. R.I. GEN. LAWS § 11-8-8 (2002).

Why do critics, commentators, and others continue to misrepresent what self-defense laws provide? Why does the minority seek to have their will overcome the long-standing rights of the majority? The next part will address and discuss some of the criticisms and commentaries regarding our right to self-defense.

V. COMMON CRITICISMS AND MISCHARACTERIZATIONS

Those who purposely misrepresent and mischaracterize what they call “stand your ground” laws attempt to cast these laws in a negative light in an attempt to discredit them and eventually abolish them. The motive behind the attack is a mystery. The majority of citizens, as reflected by the laws enacted by their chosen representatives, believes law-abiding citizens should be able to effectively and lawfully defend themselves, including against the use of deadly force. Citizens believe that, when faced with the immediate fear of death, they should not have to try to evaluate and discover a place where they can safely run and hide to avoid defending themselves. A criminal assailant will not wait idly by while a victim tries to evaluate his chances of finding and retreating to a hiding place.

Critics and commentators wasted no time in declaring the Florida statute and other similar statutes “Shoot First Laws”¹⁵⁷ and predicted that the Florida law would result in a “‘Wild West’ atmosphere in Florida.”¹⁵⁸ Six months before the Florida legislature passed the new law in October 2005, a media critic and opponent of the proposed new law also said the law brought the “Wild West to Florida” and declared it “encourages vigilante ‘justice’ and em-

157. Chuck, *supra* note 66. The author also says, “Stand Your Ground laws . . . change the legal definition of self-defense.” *Id.* As discussed in this Article, that is not true.

158. See *Florida Legislation—The Controversy Over Florida’s New “Stand Your Ground” Law*, 33 FLA. ST. U. L. REV. 351, 351–56 (2005). The author cites a St. Petersburg Times article entitled *Legislature Says Let the Force Be with You* and quotes Florida State Senator Steven Geller as saying the law “will encourage a ‘Wild West’ atmosphere in Florida, where people are emboldened to use deadly force without fear of prosecution.” *Id.* (quoting Steve Bosquet, *Legislature Says Let the Force be With You*, ST. PETERSBURG TIMES (April 6, 2005) http://www.sptimes.com/2005/04/06/State/Legislature_says_let_.shtml).

powers street gangs.”¹⁵⁹ It is difficult to understand how such an unequivocal prediction about the effect of the new law could be made by anyone who actually read the statute. Street gangs were not and still are not empowered by the law, and vigilante justice did not emerge. Criminals did not seem to take note of the new law, and life continued as before passage of the statute. The only change was law-abiding citizens felt safer. Florida did not become the “Wild West,” and vigilantism did not rule the day, nor does it today, ten years after the passage of the statute.

As discussed earlier, once Florida amended its statute, other states reviewed their self-defense laws and amended their statutes to provide their citizens with similar protections. Some states merely codified their common law recognition of no duty to retreat.¹⁶⁰ Others joined the majority and abolished a duty to retreat as Florida did.¹⁶¹ But in spite of the declared and obvious purpose of these legislative changes, commentators immediately began to misrepresent the changes, their effect, and the legitimate reason for the amendments. One commentator declared in the title to an article published anonymously that these statutes were “sanction[ing]

159. Martin Dyckman, *Bringing the Wild West to Florida*, TAMPA BAY TIMES, (Mar. 27, 2005) http://www.sptimes.com/2005/03/27/Columns/Bringing_the_Wild_Wes.shtml.

160. ARIZ. REV. STAT. ANN. § 13-405 (2010 & Supp. 2012), GA. CODE ANN. §16-3-23.1 (2011); IND. CODE § 35-41-3-2 (West, Westlaw through P.L. 1-2016 and P.L. 2-2016); MISS. CODE ANN. § 97-3-15 (2006); MONT. CODE ANN. 45-3-110 (2011); NEV. REV. STAT. ANN. § 200.120 (West, Westlaw through 2015 Reg. & Spec. Sess.); N.C. GEN. STAT. § 14-51.3 (2011); OKLA. STAT. ANN. tit. 21, § 1289.25 (West Supp. 2013); S.D. CODIFIED LAWS § 22-18-4 (2006); *State v. Jackson*, 382 P.2d 229, 232 (Ariz. 1963); *Johnson v. State*, 315 S.E.2d 871, 872 (Ga. 1984); *Runyan v. State*, 57 Ind. 80, 82–83 (Ind. 1877); *Cook v. State*, 467 So.2d 203, 210 (Miss. 1985); *State v. Sunday*, 609 P.2d 1188, 1195 (Mont. 1980); *Culverson v. State*, 797 P.2d 238, 240–41 (Nev. 1990); *State v. Allen*, 541 S.E.2d 490, 497 (N.C. Ct. App. 2000); *Bechtel v. State*, 840 P.2d 1, 12–13 (Okla. Crim. App. 1992); *State v. Burtzlaff*, 493 N.W.2d 1, 7 (S.D. 1992).

161. ALA. CODE § 13A-3-23 (West, Westlaw through Act 2015-559 of the 2015 Reg., First Spec. and Second Spec. Sess.); ALASKA STAT. § 11.81.335 (2012); LA. STAT. ANN. § 14:19 (West, Westlaw through 2015 Reg. Sess.); N.H. REV. STAT. ANN. § 627:4 (LexisNexis 2007 & Supp. 2012); S.C. CODE ANN. § 16-11-440 (Supp. 2012); TEX. PENAL CODE ANN. §§ 9.31, 9.32 (West 2011).

deadly force.”¹⁶² Contrary to such an irresponsible, baseless characterization, the states, through these statutes, sanction self-defense and a person’s right to life.¹⁶³ The author went on to say, “[w]hile it already is legal in most cases to use deadly force against an attacker in your home, the new self-defense laws allow victims to retaliate against an attacker in public.”¹⁶⁴ The reason many states have amended their self-defense laws and expanded the protections afforded to law-abiding citizens in their home is because, as the author says, deadly force can be used only “in most cases” when a person is *attacked* in his home.¹⁶⁵ “In *most* cases” is not good enough, as the majority of states recognize. Law abiding citizens should be able to protect themselves always, not just in their home “in most cases.”

The same author cited above and others also allege the self-defense laws allow victims to retaliate.¹⁶⁶ The Merriam-Webster online dictionary defines *retaliate* as follows: “to do something bad to someone who has hurt you or treated you badly: to get revenge against someone; to repay (as in an injury) in kind.”¹⁶⁷ This definition, along with the ordinary understanding of what retaliate means, connotes an act that comes sometime after a prior bad act for the purpose of revenge. There is nothing in the Florida statute or any other so-called “stand your ground” statute that allows a person to retaliate after being attacked, assaulted, or “treated . . . badly”¹⁶⁸ by someone else.¹⁶⁹ No self-defense statute allows retaliation.¹⁷⁰ Additionally, if a potential victim is confronted with deadly force and does not defend himself, he would likely be phys-

162. Kavan Peterson, *More States Sanction Deadly Force*, THE PEW CENTER ON THE STATES (April 26, 2006) <https://web.archive.org/web/20110101085316/http://www.stateline.org/live/ViewPage.action?siteNodeId=136&languageId=1&contentId=107276>.

163. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

164. See Peterson *supra* note 162.

165. *Id.*

166. *Id.*; see also Wyatt Holiday, “*The Answer to Criminal Aggression is Retaliation*”: *Stand-Your-Ground Laws and the Liberalization of Self-Defense*, 43 U. TOL. L. REV. 407 (2012).

167. Definition of “*Retaliate*,” *Merriam-Webster Online Dictionary*, <http://www.merriam-webster.com/dictionary/retaliate> (last visited Feb. 15, 2016).

168. *Id.*

169. See *supra* Section III.A.

170. See *supra* Section III.A.

ically unable or have no opportunity to retaliate at some later time. As discussed earlier, all states restrict the use of deadly force in self-defense to situations where the danger of deadly force is imminent or immediate and/or the use of defensive force is necessary.¹⁷¹ Clearly, retaliation does not meet these requirements.

In the same article, the author quotes a state senator commenting after the Kentucky legislature amended its self-defense law, “It’s perfectly clear in Kentucky that you have a right to self-defense. The purpose of this bill was to sanction the use of firearms in all kinds of disputes, and that does not further public safety.”¹⁷² Of course, neither the author nor the senator cite any legislative history or other source that indicates in any way the purpose of the bill “was to sanction the use of firearms in all kinds of disputes.”¹⁷³ Even a cursory reading of the Kentucky statute makes it clear the purpose of the statute is to allow the law-abiding people of Kentucky to protect themselves against violent attacks, including those involving guns, and from violent felons.¹⁷⁴ To equate the justification of the use of force to protect oneself against a deadly attack with a mere “dispute” creates a false narrative regarding the purpose and effect of all self-defense laws. Furthermore, the statute does not just apply to defensive force involving guns. It applies to any deadly force, which can include the use of a knife, a baseball bat, or any other object or force, including bare hands, capable of inflicting great bodily harm or death. But for some reason, the senator and others who oppose the protections afforded by these statutes tend to always try to connect them to guns and unlawful violence.

The same author also states that “[c]ritics, such as the Brady Campaign to Prevent Gun Violence, have dubbed the new measures ‘shoot-first’ laws and argue the statutes would make it

171. See *supra* Section III.A.

172. See Peterson *supra* note 162, at 2.

173. *Id.*

174. KY. REV. STAT. ANN. § 503.055(3) (LexisNexis 2008) (“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 felony involving the use of force.*” (emphasis added)).

more likely that confrontations turn deadly and will make it harder to prosecute people who commit acts of violence.”¹⁷⁵ No basis is given for such a prediction, and no facts or statistics support it. The defense afforded by these statutes does not make it easier for those who commit unjustified/unlawful acts of violence to avoid prosecution. The author goes on to quote a spokesperson of the Brady Campaign as saying, “Unfortunately, the law has had precisely the effect we thought it would. A handful of overly aggressive individuals are using it as a defense for actions that appear to go beyond the pale of self-defense.”¹⁷⁶ No facts or verifiable statistics are offered to substantiate that claim. As discussed earlier, no self-defense statute allows an aggressor to claim self-defense.¹⁷⁷ The article indicates the same spokesperson said the Florida statute adopted in 2005 “ha[d] been cited as a defense in at least three cases” by the date of the article, which is April 26, 2006.¹⁷⁸ Only a brief statement of the facts in these three cases is mentioned, and the specific statute is not identified. No citations are given to location, court, or any other information, and no information is given regarding the outcome of these cases. Furthermore, even if we assume the three defendants were engaged in the unlawful use of force, three cases in one year does not justify taking away law-abiding citizens’ rights to defend themselves. People try to manipulate a variety of laws for their own benefit and purposes. That doesn’t mean there is anything wrong with the laws. Just because a few individuals *may* attempt to use self-defense to avoid answer-

175. Peterson, *supra* note 162; see ARIZ. REV. STAT. ANN. § 13-405 (2010 & Supp. 2012), GA. CODE ANN. §16-3-23.1 (2011); IND. CODE § 35-41-3-2 (West, Westlaw through P.L. 1-2016 and P.L. 2-2016); MISS. CODE ANN. § 97-3-15 (2006); MONT. CODE ANN. § 45-3-110 (2011); NEV. REV. STAT. ANN. § 200.120 (West, Westlaw through 2015 Reg. & Spec. Sess.); N.C. GEN. STAT. § 14-51.3 (2011); OKLA. STAT. ANN. tit. 21, § 1289.25 (West Supp. 2013); S.D. CODIFIED LAWS § 22-18-4 (2006); *State v. Jackson*, 382 P.2d 229, 232 (Ariz. 1963); *Johnson v. State*, 315 S.E.2d 871, 872 (Ga. 1984); *Runyan v. State*, 57 Ind. 80, 82–83 (Ind. 1877); *Cook v. State*, 467 So.2d 203, 210 (Miss. 1985); *State v. Sunday*, 609 P.2d 1188, 1195 (Mont. 1980); *Culverson v. State*, 797 P.2d 238, 240–41 (Nev. 1990); *State v. Allen*, 541 S.E.2d 490, 497 (N.C. Ct. App. 2000); *Bechtel v. State*, 840 P.2d 1, 12–13 (Okla. Crim. App. 1992); *State v. Burtzlaff*, 493 N.W.2d 1, 7 (S.D. 1992).

176. Peterson, *supra* note 162.

177. See *supra* Section III.B.

178. Peterson, *supra* note 162.

ing for their violent crimes that does not justify taking away everyone's right to defend themselves. If states refused to enact laws that someone may try to use in an inappropriate or unintended manner, there would be very few statutes on the books. Based on this false logic, defenses such as insanity and entrapment should also be repealed.

The Brady Campaign to Prevent Gun Violence has opposed these stronger self-defense laws since before Florida passed its revised statute in 2005.¹⁷⁹ One commentator says, “[t]he Brady Campaign believes that the new laws effectually grant people a ‘license to kill.’”¹⁸⁰ No reasonable interpretation of any self-defense statute, including Florida's, would even suggest they grant people a license to kill. The spokesperson of the Brady Campaign has also been quoted as saying, “you don't just broadly paint a new statewide law saying, if you're in doubt, go ahead and shoot and kill the other person.”¹⁸¹ Again, this critic misquotes the statute, the legislative intent, and the standard imposed by the statute.¹⁸² No self-defense statute or law, stand your ground or otherwise, comes anywhere near saying, suggesting, or hinting that doubt alone justifies killing an attacker.¹⁸³ As discussed above, a basic component of self-defense is a reasonable belief that deadly force is necessary to defend against deadly force.¹⁸⁴ Critics who continue to make these deliberate misrepresentations run the risk of creating the very effect they decry. The doomsday scenario painted by these critics did not materialize when the majority of states

179. The Brady Campaign went so far as to attack the Florida tourism industry by “passing out leaflets in Florida airports, issuing press releases, and posting ads warning that tourists now ‘face a greater risk of bodily harm in Florida’ because of the ‘Shoot First Law.’” Renee L. Lerner, *The Worldwide Popular Revolt Against Proportionality in Self-Defense Law*, 2 J.L. ECON. & POL'Y 331, 343 (2006).

180. Jason W. Bobo, *Following the Trend: Alabama Abandons the Duty to Retreat and Encourages Citizens to Stand Their Ground*, 38 CUMB. L. REV. 339, 363 (2008).

181. *Id.* at 363–64 (citation omitted).

182. *See supra* note 84.

183. *See supra* pp. 12–14 (noting the requirement of reasonable belief).

184. *Id.*

passed no retreat statutes years before Florida or when Florida and other states joined that majority.¹⁸⁵

Critics and commentators also allege these self-defense laws eliminate proportionality, a basic component of self-defense discussed earlier.¹⁸⁶ Every state, whether by statute or common law, requires that a person be confronted with force likely to cause death or serious/great bodily injury before using deadly force in self-defense.¹⁸⁷ There is, therefore, no question that these laws

185. See Angie D. 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/>.

186. See, e.g., Catalfamo, *supra* note 78, at 504.

187. ALA. CODE § 13A-3-23 (West, Westlaw through Act 2015-559 of the 2015 Reg., First Spec. and Second Spec. Sess.); ALASKA STAT. § 11.81.335 (2012); ARIZ. REV. STAT. ANN. § 13-405 (2010 & Supp. 2012); ARK. CODE ANN. § 5-2-607 (West, Westlaw through 2015 Reg. & 1st Ex. Sess.); CAL. PENAL CODE § 197 (West 2008); COLO. REV. STAT. § 18-1-704 (2012); CONN. GEN. STAT. ANN. § 53a-19 (West 2012); DEL. CODE ANN. tit. 11, § 464 (2007); FLA. STAT. ANN. §§ 776.012, 776.013 (West 2011); GA. CODE ANN. § 16-3-21 (2011); HAW. REV. STAT. § 703-304 (LexisNexis 2007); IDAHO CODE ANN. § 18-4009 (2004); 720 ILL. COMP. STAT. ANN. 5/7-1 (West 2002 & Supp. 2013); IND. CODE 35-41-3-2 (West, Westlaw through P.L. 1-2016 and P.L. 2-2016); IOWA CODE ANN. § 704.1 (West 2003); KAN. STAT. ANN. § 21-5222 (West, Westlaw through 2015 Reg. Sess.); KY. REV. STAT. ANN. § 503.050 (LexisNexis 2008); LA. STAT. ANN. § 14:20 (West, Westlaw through 2015 Reg. Sess.); ME. REV. STAT. ANN. tit. 17A, § 108 (2006 & Supp. 2012); MICH. COMP. LAWS ANN. 780.972 (West 2007); MINN. STAT. ANN. § 609.065 (West 2009); MISS. CODE ANN. § 97-3-15 (2006); MO. ANN. STAT. § 563.031 (West 2012); MONT. CODE ANN. § 45-3-102 (2011); NEB. REV. STAT. § 28-1409 (2008); NEV. REV. STAT. ANN. § 200.160 (LexisNexis 2012); N.H. REV. STAT. ANN. § 627:4 (LexisNexis 2007 & Supp. 2012); N.J. STAT. ANN. § 2C:3-4 (West 2005); N.M. STAT. ANN. § 30-2-7 (West, Westlaw through 2015 First Spec. Sess.); N.Y. PENAL LAW § 35.15 (McKinney 2009); N.C. GEN. STAT. § 14-51.3 (2011); N.D. CENT. CODE § 12.1-05-07 (2012); OKLA. STAT. ANN. tit. 21, § 733 (West, Westlaw through 2015 First Sess.); OR. REV. STAT. § 161.219 (2011); 18 PA. STAT. AND CONS. STAT. ANN. § 505 (West 1998 & Supp. 2013); S.C. CODE ANN. § 16-11-440 (Supp. 2012); S.D. CODIFIED LAWS §§ 22-16-34, 22-16-35 (2006); TENN. CODE ANN. § 39-11-611 (2014); TEX. PENAL CODE ANN. § 9.32 (West 2011); UTAH CODE ANN. § 76-2-402 (LexisNexis 2012); VT. STAT. ANN. tit. 13, § 2305 (2009); WASH. REV. CODE ANN. § 16.050 (West Supp. 2013); W. VA. CODE § 55-7-22 (LexisNexis 2008); WIS. STAT. ANN. § 939.48 (West Supp. 2012); *Christian v. State*, 951 A.2d 832 (Md. 2008); *Commonwealth v. Haith*,

retain the traditional requirement of proportionality: deadly force can only be used against deadly force. So why do some commentators say the Florida statute and other similar statutes eliminate the proportionality requirement?

The 2005 Florida statute made two major changes to the state's self-defense law. First, it eliminated a duty to retreat before defending against deadly force.¹⁸⁸ As seen in the statute and discussed above, the statute did not change the proportionality requirement at all.¹⁸⁹ The second major change in the statute involved the creation of certain presumptions connected to the state's home protection statute.¹⁹⁰ The presumptions apply if an intruder "was in the process of *unlawfully and forcefully* entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle."¹⁹¹ Twenty-three other states have created similar presumptions, some before Florida and others after.¹⁹² Some of these states did not impose a duty to retreat before 2005, but critics did

894 N.E.2d 1122, 1128 (Mass. 2008); *State v. Hanes*, 783 A.2d 920, 925–26 (R.I. 2001); *Gilbert v. Commonwealth*, 506 S.E.2d 543, 547 (Va. Ct. App. 1998); VA. PRACTICE JURY INSTRUCTIONS §§ 63.1, 63.6 (2015); WYO. PATTERN JURY INSTRUCTION § 8.02 (2014); MD. STATE BAR ASS'N CRIMINAL PATTERN JURY INSTRUCTIONS § 5:07 (2013); 2 CR OHIO JURY INSTRUCTIONS § 417.27 (2008); VT. BAR ASS'N CRIMINAL JURY INSTRUCTION § 111 (2005).

188. FLA. STAT. ANN. §§ 776.012, 776.031 (West 2010).

189. FLA. STAT. ANN. § 776.012 (Supp. 2015).

190. FLA. STAT. ANN. § 776.013 (Supp. 2015).

191. *Id.* (emphasis added).

192. ALA. CODE § 13A-3-23; ARIZ. REV. STAT. ANN. § 13-411 (2010 & Supp. 2012); ARK. CODE ANN. § 5-2-620 (West, Westlaw through 2015 Reg. & 1st Ex. Sess.); CAL. PENAL CODE § 198.5 (West 2008); KAN. STAT. ANN. § 21-5224 (West, Westlaw through 2015 Reg. Sess.); KY. REV. STAT. ANN. § 503.055 (LexisNexis 2008); LA. STAT. ANN. § 14:19 (West, Westlaw through 2015 Reg. Sess.); MICH. COMP. LAWS ANN. § 780.951 (West 2007); MISS. CODE ANN. § 97-3-15 (2006); NEV. REV. STAT. ANN. § 41.095 (West, Westlaw through 2015 Reg. & Spec. Sess.); N.J. STAT. ANN. § 2C:3-4; N.C. GEN. STAT. § 14-51.2; N.D. CENT. CODE § 12.1-05-07.1; OHIO REV. CODE ANN. § 2901.05 (LexisNexis 2010); OKLA. STAT. ANN. tit. 21, § 1289.25 (West Supp. 2013); 18 PA. STAT. AND CONS. STAT. ANN. § 505; R.I. GEN. LAWS § 11-8-8 (2002); S.C. CODE ANN. § 16-11-440; TENN. CODE ANN. § 39-11-611; TEX. PENAL CODE ANN. §§ 9.31, 9.32 (West 2011); UTAH CODE ANN. § 76-2-405 (LexisNexis 2012); WIS. STAT. ANN. § 939.48 (West Supp. 2012); WYO. STAT. ANN. § 6-2-602 (2013).

not categorize them as “stand your ground” states.¹⁹³ On the other hand, some state legislatures that created these same presumptions require retreat before using deadly force in self-defense.¹⁹⁴ These retreat states with presumptions certainly were never characterized as “stand your ground” states.

Detractors from and critics of stronger self-defense laws, even in one’s own home, vehicle, or place of business, see these presumptions as a “revolt against proportionality” in self-defense.¹⁹⁵ The plain language of the statutes and the clear legislative intent debunk that characterization. Proportionality is clearly required in all the statutes. Additionally, the plain language and the legislative intent reveal the states seek another purpose: they attempt to level the playing field for law-abiding residents and visitors. If someone has “unlawfully and forcibly” entered another’s home, dwelling, occupied vehicle, or even business, that criminal has exhibited force in a way that shows a willingness to use violence against anyone he encounters. Why should a homeowner in the middle of the night awakened by someone unlawfully and for-

193. It is hard to determine which states would be considered “stand your ground” states because that designation seems to apply only to Florida and other states that joined the majority of no-retreat states beginning in 2005. The pre-2005 no-retreat states that created the presumptions are: Arizona, California, Kansas, Kentucky, Michigan, Mississippi, Nevada, North Carolina, North Dakota, Oklahoma, Tennessee, Utah, and Wisconsin. See ARK. CODE ANN. § 5-2-607(b) (West, Westlaw through 2015 Reg. & 1st Ex. Sess.) (dwelling and surrounding curtilage); CONN. GEN. STAT. ANN. § 53a-19(b) (dwelling or place of work); DEL. CODE ANN. tit. 11, § 464(e)(2) (dwelling or place of work); HAW. REV. STAT. ANN. § 703-304(5)(b) (LexisNexis 2007) (dwelling or work place); IOWA CODE ANN. § 704.1 (West 2003) (dwelling or place of business or employment); NEB. REV. STAT. § 28-1409(4)(b) (2008) (dwelling or place of work); OHIO REV. CODE ANN. § 2901.09 (LexisNexis 2010) (residence or vehicle); 18 PA. STAT. AND CONS. STAT. ANN. § 505 (no duty to retreat in dwelling, place of work, or if other person uses a firearm or replica of a firearm or any other weapon readily or capable of lethal use).

194. The retreat states with statutory presumptions that benefit citizens through the castle doctrine are: Arkansas, New Jersey, North Dakota, Ohio, Pennsylvania, Rhode Island, and Wyoming. ARK. CODE ANN. § 5-2-620; N.J. STAT. ANN. § 2C:3-4; N.D. CENT. CODE § 12.1-05-07.1; OHIO REV. CODE ANN. § 2901.05; 18 PA. STAT. AND CONS. STAT. ANN. § 505; R.I. GEN. LAWS § 11-8-8; WYO. STAT. ANN. § 6-2-602.

195. See Renee L. Lerner, *The Worldwide Popular Revolt Against Proportionality in Self-Defense Law*, 2 J. L. ECON. & POL’Y 331, 334 (2006).

cibly entering his house be required to determine if the intent of the felon is to use deadly or non-deadly force against him? The intruder himself may not even know until he decides to use it.

If anything, the presumptions created in statutes like Florida's return some proportionality to a dangerous and intolerable situation. Without the presumptions, the homeowner faces the possibility that a prosecutor, judge, or jury in the cool calm of the aftermath of such a horrible incident will decide that the intruder did not intend to use deadly force because he was not armed or for any other reason. First, one does not have to be armed to have the ability to use deadly force. Critics seem to believe only guns constitute deadly force. Second, someone not faced with the frightening reality of a criminal in his or her home intending to do who knows what cannot understand the danger and stress such a scenario creates. The police, prosecutor, judge, or jury will be able to review all facts, most of which would have been unknown to the person confronted with the criminal, feeling no fear, urgency, or stress. That is why states are evening the odds for the law-abiding citizen by creating these presumptions of reasonable fear. They add proportionality to a disproportionate situation while maintaining the traditional proportionality component required for all self-defense.

Some critics are willing to say anything to try to discredit self-defense laws. In discussing Florida's new law, one commentator began by saying that Florida was "a notorious violent state" with no statistics or support for such a bold statement.¹⁹⁶ Even if it were true, such a characterization would support the added protections the Florida legislature enacted in 2005. States with higher crime rates and more violence have a duty to allow their law-abiding residents and visitors to protect themselves without increasing the danger to themselves by imposing a duty to retreat or second guessing them when they are accosted in their residences, business, or vehicles.

Other critics try to connect self-defense laws with concealed carry gun laws in an attempt to discredit both. Concealed carry laws have their genesis in a citizen's Second Amendment

196. Catalfamo, *supra* note 78, at 504.

right to bear arms.¹⁹⁷ Self-defense laws, on the other hand, deal with a person's fundamental right to life as enumerated and recognized in the Declaration of Independence.¹⁹⁸ But because there are those segments in our society who are opposed to law-abiding citizens exercising their Second Amendment right to "bear arms," they seem to be attempting to cast both laws in a particularly bad light by trying to connect them in some nefarious plot to do something horrible to and in America. In a report on gun violence in America, a member of the U.S. Congress indicates the top priority in dealing with gun violence is to get the states to "impose a duty to retreat on individuals before they are deemed justified in using deadly force."¹⁹⁹ If gun violence in America is as she reports, law-abiding citizens need strong self-defense laws to defend themselves against the violence.

Laws that impose impossible choices in life-and-death situations require citizens to hesitate before defending themselves and their family. Hesitation puts innocent victims at the mercy of criminals, who do not hesitate to use whatever force is necessary to bring about their criminal intentions. The majority of states refuse to create an even more dangerous situation by requiring a person to retreat before defending himself or another from deadly force. The people of each state have spoken through their elected state representatives, and federal legislators should not interfere in any way. Federal politicians are not paid by taxpayers to attempt to subvert state laws.

VI. CONCLUSION

In order to deal with the criminal use of deadly force, each state recognizes a person's right to use deadly force in self-defense. Most states recognize the long-standing tradition in this country to allow the justifiable use of deadly force in self-defense without first retreating. A minority of states follows the English

197. U.S. CONST. amend. II; *see also* *D.C. v. Heller*, 554 U.S. 570, 595 (2008) (holding that the Second Amendment confers an individual right to bear arms).

198. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

199. U. S. CONGRESSWOMAN ROBIN L. KELLY, 2014 KELLY REPORT: GUN VIOLENCE IN AMERICA 63 (2014), https://robinkelly.house.gov/sites/robinkelly.house.gov/files/wysiwyg_uploaded/KellyReport_1.pdf.

tradition and requires a law-abiding citizen, resident, or visitor to retreat—to turn from and leave the place where a criminal is threatening the use of deadly force—if he can do so safely. All states retain the three traditional components required for self-defense, including for the use of deadly force. Those components are proportionality, necessity, and reasonable belief. All “stand your ground” statutes specifically include all of these components.

As discussed throughout this article, in 2005, the parameters for the justifiable use of deadly force adopted by the majority came under attack when Florida decided to join that majority and follow the American tradition of recognizing a person’s right to protect himself from deadly force without first retreating. The attacks used to discredit these parameters resorted, and still resort, to mischaracterizations that lead to misunderstanding. Critics and opponents ignore the plain language of what they call “stand your ground” statutes, resulting in the statutes being misconstrued and misunderstood. Commentators make wild accusations regarding the intent of the statutes and baseless doomsday predictions. None of the predictions have materialized.

When the statutes characterized as “stand your ground” statutes are actually read, the purpose of these statutes, like all self-defense statutes, becomes clear. It is to protect law-abiding citizens from the unlawful use of deadly force by allowing them to protect themselves. Police cannot protect every single person every day. Absent their presence or some special undertaking, police do not have a duty to protect individuals who are threatened with harm.²⁰⁰ Criminals do not usually attack or assail people in front of the police, so even if police had such a duty, nothing would change. As a result, states seek to protect people from criminals by allowing them to protect themselves when it becomes necessary. States that do not impose the impossible task of determining a place of safety to which to retreat do not require law-abiding citizens to make impossible decisions when endangered by deadly force. These states have been accused of sanctioning violence and retaliation, allowing people to shoot without reason, and creating a dangerous wild-west scenario. No logical justification for these unsubstantiated claims exists, and no reasonable explanation can be found for making them, nor has any been given.

200. See *Riss v. City of New York*, 240 N.E.2d 860, 861 (N.Y. 1968).

In addition to protecting people by allowing them to defend themselves without retreating, Florida and other no retreat states and some retreat states provide greater protections for those in their home, dwelling, vehicle, or place of business. These additional protections are founded on the long-accepted castle doctrine and include conclusive or rebuttable presumptions and criminal and/or civil immunity. The presumptions created require or allow a person's reasonable fear of imminent danger of death or great/serious bodily injury to be presumed when someone unlawfully and forcefully is entering or has entered any of the places designated by the statute. The statutes also create a presumption that the person who unlawfully and forcefully enters or has entered has the intent to commit an unlawful act involving force or violence. Criminal and/or civil immunity is also granted in some statutes if the person defending himself or another is justified in using deadly force in the places so designated.

Critics and commentators attempt to discredit self-defense laws that do not impose a duty to retreat and cite increasing violence, crime, and illegal use of guns as reasons for imposing a duty to retreat. These reasons actually support strong self-defense laws that allow law-abiding citizens to defend themselves without first making an impossible analysis of their surroundings, a potential place of safety, and a criminal's intent. The more crime, violence, and illegal guns there are the more law-abiding people need to defend themselves. To advocate the repeal of strong self-defense laws because of an increase in crime and gun violence is a non sequitur. Reason and logic dictate that if crime and violence increase the law-abiding potential victims should be afforded greater protections through strong self-defense laws.

The Declaration of Independence acknowledges our fundamental right to life and liberty. The United States Constitution guarantees our right to defend ourselves and to bear arms. This country is founded upon a rich history of individualism and independence. That is why the majority has never embraced the English duty to retreat before defending against deadly force. The majority has allowed and still allows a person to stand his ground to defend against deadly force by using deadly force without first being backed into a corner by retreating "to the wall." In addition to crime and violence, this country faces an unprecedented threat of terrorism. Strong self-defense laws protect law-abiding citizens by allowing them to protect themselves when necessary and pre-

serve individual freedom by ensuring the fundamental right to life and liberty. The so-called “stand your ground” laws provide this protection and preserve freedom.

The thirty-three no retreat states should ignore the unfounded, unsubstantiated, and untrue criticisms of their statutes and common law and continue to refuse to impose a duty to retreat upon their citizens, residents, and visitors. The so-called “stand your ground” states provide vital protections for potential victims of crime and violence. Retreat states should set aside all politicizing of their citizens’ safety and right to defend themselves and take action to strengthen that right. Retreat states should become no retreat states and provide as many common sense protections for the law-abiding citizens, residents, and visitors in their state as required for their safety and security. All state legislators should consider *facts* regarding crime, victims, and self-defense. States that still impose a duty to retreat should actually read “stand your ground” statutes and not rely on others’ interpretations. Critics, commentators, and politicians who predicted doom and destruction when Florida passed its 2005 self-defense statutes were wrong. Strong self-defense laws provide exactly the opposite—safety and security for law-abiding citizens, which should be the top priority for all lawmakers. All states should resist the influence and unfair characterizations of others, especially those with political agendas that include bullying states into retreating from legitimate and much needed self-defense protections. The actual language of stand your ground laws already protect against the evils decried by critics and politicians and prescribe the conditions for true self-defense by victims and potential victims of violent crime. Stand your ground laws focus on innocent victims instead of the criminals, which should be the focus of all self-defense laws.