

# 28 Days Later



October 2020 Pupilage

# Introductions

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# Overview

- Castle Doctrine

- Martial Law

- *Zombieism*

**Trigger Warning**

# The Castle Doctrine



# State Self-Defense Laws

Majority of states in U.S. are “stand your ground” states and only a minority are “duty to retreat” states.

Generally three categories exist:

- 1) Stand Your Ground States
- 2) Castle Doctrine States
- 3) Duty to Retreat States

“Castle Doctrine” means generally that individuals have the right to use reasonable force, including deadly force, to protect themselves against an intruder in their home. This has been expanded in most states to extend to any lawfully occupied place.

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<https://www.ncsl.org/research/civil-and-criminal-justice/self-defense-and-stand-your-ground.asp>



# **Oregon Constitution--Article 1, Section 27**

## **Section 27. Right to bear arms; military subordinate to civil power.**

The people shall have the right to bear arms for the defence [sic] of themselves, and the State, but the Military shall be kept in strict subordination to the civil power[.]



# ORS 161.209

## Use of physical force in defense of a person

Except as provided in [ORS 161.215](#) and [161.219](#), a person is justified in using physical force upon another person for self-defense or to defend a third person from what the person reasonably believes to be the use of imminent use of unlawful physical force, and the person may use a degree of force which the person reasonably believes to be necessary for the purpose.

When physical force is “justified” and thus, lawful.

# ORS 161.215

Notwithstanding ORS 161.209, a person is **not justified** in using physical force upon another person **if**:

- 1) With intent to cause physical injury or death to another person, the person provokes the use of unlawful physical force by that person; or
- 2) The person is the initial aggressor, except that the use of physical force upon another person under such circumstances is justifiable if the person withdraws from the encounter and effectively communicates to the other person the intent to do so, but the latter nevertheless continues or threatens to continue the use of unlawful physical force; or
- 3) The physical force involved is the product of a combat by agreement not specifically authorized by law.

# ORS 161.219

Notwithstanding ORS 161.209, a person is **not justified** in using deadly physical force upon another person **unless** the person reasonably believes that the other person is:

- 1) Committing or attempting to commit a felony involving the use or threatened imminent use of physical force against a person; or
- 2) Committing or attempting to commit a burglary in a dwelling; or
- 3) Using or about to use unlawful deadly physical force against a person.

# ORS 161.225

## Use of physical force in defense of premises

- (1) A person in lawful possession or control of premises is justified in using physical force upon another person when and to the extent that the person reasonably believes it necessary to prevent or terminate what the person reasonably believes to be the commission or attempted commission of a criminal trespass by the other person in or upon the premises.
- (2) A person may use deadly physical force under the circumstances set forth in subsection (1) of this section only:
  - (a) In defense of a person as provided in ORS 161.219; or
  - (b) When the person reasonably believes it necessary to prevent the commission of arson or a felony by force and violence by the trespasser.
- (3) As used in subsection (1) and (2)(a) of this section, “premises” includes any building as defined in ORS 164.205 and any real property. As used in subsection (2)(b) of this section, “premises” includes any building.

# State of Oregon v. Sandoval

## 342 Or. 506, 156 P.3d 60 (2007)

Appeal of murder conviction contending improper jury instructions that instructed the jury that a person is justified in using deadly force in self-defense to defend against imminent use of deadly force by another *only if there is no opportunity to escape and no other means of avoiding the combat.*

# **State of Oregon v. Sandoval**

## **342 Or. 506, 156 P.3d 60 (2007) (cont.)**

*Charles* overturned because it “has nothing to contribute to our present effort, which is to discern what the legislature intended with respect to the ‘duty of retreat’ question.”

# **State of Oregon v. Sandoval**

**342 Or. 506, 156 P.3d 60 (2007) (cont.)**

The court determined: “The legislature did not intend to require a person to retreat before using deadly force to defend against the imminent use of deadly physical force by another.”



# State Survey

The following states have laws that state there is no duty to retreat from an attacker in any place in which one is lawfully present, i.e. a “stand your ground law”:

Alabama, Alaska, Arizona, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah and West Virginia

At least 10 of those including language stating one may “stand his or her ground.”

Alabama, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Oklahoma, Pennsylvania and South Carolina

The following 8 states have controlling judicial decisions interpreting their self defense laws to mean there is no duty to retreat and have created a “stand your ground” policy for their state:

California, Colorado, Illinois, New Mexico, Oregon, Vermont, Virginia, Washington





# State Survey- Florida

Florida Law from 2005 states: “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 to prevent the commission of a forcible felony.”

<https://www.ncsl.org/research/civil-and-criminal-justice/self-defense-and-stand-your-ground.asp>

# State Survey

Pennsylvania's law, amended in 2011, distinguishes use of deadly force outside one's home or vehicle. It provides that in such locations one cannot use deadly force unless he has reasonable belief of imminent death or injury, and either he or she cannot retreat in safety or the attacker displays or uses a lethal weapon.

Idaho's law, passed in 2018, expanded the definition of justifiable homicide to include not only defending one's home against an intruder, but also defending one's place of employment or an occupied vehicle.



# State Survey

Self-defense laws in at least 23 states provide civil immunity under certain self-defense circumstances:

Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Montana, New Hampshire, North Carolina, North Dakota, Oklahoma, Ohio, Pennsylvania, South Carolina, Tennessee, West Virginia, and Wisconsin

Statutes in at least six states assert that civil remedies are unaffected by criminal provisions of self-defense law.

Hawaii, Missouri, Nebraska, New Jersey, North Dakota, and Tennessee

<https://www.ncsl.org/research/civil-and-criminal-justice/self-defense-and-stand-your-ground.asp>

# State Survey

Some states have replaced the common law “reasonable person” standard, requiring the defendant to show they were acting reasonably, with a “presumption of reasonableness,” or “presumption of fear,” which shifts the burden of proof to the prosecutor.

Arizona, Arkansas, California, Florida, Kansas, Kentucky, Louisiana, Mississippi, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Wisconsin, and Wyoming

<https://www.ncsl.org/research/civil-and-criminal-justice/self-defense-and-stand-your-ground.asp>

■ States with Stand Your Ground Laws

▨ States with Stand Your Ground standards due to court decisions



# Stand Your Ground State by State

STATE	STAND YOUR GROUND?	DEADLY FORCE AGAINST A FLEEING PERSON?	PROVISIONS LIMITING ARRESTS IN SYG CASES?	DEADLY FORCE AGAINST PROPERTY CRIMES?
ALABAMA	YES			
ALASKA	YES			
ARIZONA	YES			YES
ARKANSAS	NO			
CALIFORNIA	YES*			
COLORADO	YES*			
CONNECTICUT	NO			
DELAWARE	NO			
FLORIDA	YES		YES	YES
GEORGIA	YES			
HAWAII	NO			
IDAHO	YES			
ILLINOIS	YES*			YES
INDIANA	YES			
IOWA	YES			
KANSAS	YES		YES	
KENTUCKY	YES		YES	
LOUISIANA	YES			
MAINE	NO			
MARYLAND	NO			
MASSACHUSETTS	NO			
MICHIGAN	YES			
MINNESOTA	NO			
MISSISSIPPI	YES			YES
MISSOURI	YES			
MONTANA	YES			

STATE	STAND YOUR GROUND?	DEADLY FORCE AGAINST A FLEEING PERSON?	PROVISIONS LIMITING ARRESTS IN SYG CASES?	DEADLY FORCE AGAINST PROPERTY CRIMES?
NEBRASKA	NO			
NEVADA	YES			
NEW HAMPSHIRE	YES			
NEW JERSEY	NO			
NEW MEXICO	YES*			
NEW YORK	NO			
NORTH CAROLINA	YES			AMBIGUOUS
NORTH DAKOTA	NO			
OHIO	NO			
OKLAHOMA	YES		YES	
OREGON	YES*			YES
PENNSYLVANIA	YES			
RHODE ISLAND	NO			
SOUTH CAROLINA	YES	YES	YES	
SOUTH DAKOTA	YES			
TENNESSEE	YES		YES	
TEXAS	YES	YES		YES
UTAH	YES			AMBIGUOUS
VERMONT	YES*			
VIRGINIA	YES*			
WASHINGTON	YES*			
WASHINGTON DC	NO			
WEST VIRGINIA	YES			
WISCONSIN	NO			
WYOMING	YES			



[https://www.splcenter.org/sites/default/files/\\_stand\\_your\\_ground\\_kills\\_-\\_how\\_these\\_nra-backed\\_laws\\_promote\\_racist\\_violence\\_1.pdf](https://www.splcenter.org/sites/default/files/_stand_your_ground_kills_-_how_these_nra-backed_laws_promote_racist_violence_1.pdf)

a copy is included with the materials following the slides!

# Segue





# Martial Law



Jurisdiction of Anarchy

# Martial Law

- Displacement of Civilian Authorities by Military
  - Non-law enforcement functions – use military helicopters for search and rescue missions
  - Law enforcement functions – troop deployment to assist police with suppression of riots
  - Military takes place of civilian government
- Not in Constitution, no Acts of Congress
  - Posse Comitatus Act - generally unlawful for military forces to engage in civilian law enforcement unless expressly authorized by Congress
  - Insurrection Act of 1807 - president may deploy US military of federalized National Guard troops to suppress civil disorder, insurrection, rebellion

# Martial Law - Supreme Court Cases

- Supreme Court has said States may declare but has never directly held that Federal government has power
  - Luther v. Borden, 48 U.S. 1 (1849) – upheld Rhode Island declaration of martial law in dispute over state constitution
  - Ex parte Milligan, 71 U.S. 2 (1866) – In dicta in concurrence, suggested that federal government can declare martial law

# Martial Law - Supreme Court Cases

- Sterling v. Constantin, 287 U.S. 378 (1932) – states cannot use martial law to escape the paramount authority of the Federal Constitution
- Duncan v. Kahanamoku, 327 U.S. 304, 309–10 (1946) – overturned conviction of civilian for embezzlement when tried by military provost court in five days without jury, convicted and sentenced to five years

# But what about State Supreme Courts?

1815 - Louisiana State Supreme Court weighed in after General Andrew Jackson kept martial law in place 2 months after the Battle of New Orleans.

The proclamation of the *Martial Law*, therefore, cannot have had any other effect than that of placing under military authority all the citizens subject to militia service. It is in that sense alone that the vague expression of *Martial Law* ought to be understood among us. To give it any larger extent would be trampling upon the constitution and laws of our country.

*Johnson v. Duncan et al. Syndics* (1815)



# Martial Law - History

- Recognized as emergency power in mid-1800s, considered outrageous before then
- Federal government use:
  - Declared over 60 times between 1861 and 1945
  - Declared more often by generals than President
  - Only a handful of times since end of reconstruction, in Hawai'i after Pearl Harbor most recent

# State Government Use of Martial Law

- States have declared martial law more frequently, mostly governors but sometimes mayors, National Guard generals
- Violent civil unrest, pesky labor strikes
- Last use – 1966 - CA governor Pat Brown imposed martial law to suppress unrest in Hunters Point neighborhood of SF after white police shot a black teenager.

# State Misuse of Martial Law

- 1933, Georgia governor declared around State Highway Board headquarters to force some commissioners out
- 1931, Texas governor imposed on several counties in opposition to federal regulation limiting oil production by private wells

# **Youngstown Sheet & Tube Co. v. Sawyer,** **343 U.S. 579 (1952)**

- Doctrinal lodestar for assessing any exercise of power by the executive, including martial law:
  - Congress authorized (maximum deference)
  - Congress has said nothing aka “zone of twilight” – Courts look to Constitution for independent authority for action
  - Conduct is contrary to laws passed by Congress – executive action not permissible unless Congress overstepped its powers

# What about COVID-19 Quarantines?

"in every well ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand"

*Jacobson v. Massachusetts* (1905)

- State and local governments have wide authority to enact emergency measures
- ORS 401.168
- These powers often have time limits. See *Midwest Institute of Health, PLLC v. Governor*

# What about Federal police in Portland?

Ron Wyden - “America staring down the barrel of martial law”

- Analysis
  - Youngstown, Posse Comitatus Act, Insurrection Act
- Should acts by Federal law enforcement be considered martial law?



We now join three Justice Department staffers in a secret underground meeting room located in the bowels of the Department of Justice

Peter : We have our marching orders

Christine: What are those orders

Peter: We need to come up with a pretext for there to be a declaration of martial law and take over the election in Portland, Oregon.

Christine: Let me get this straight. You are trying to find a way to justify the replacement of civilian authorities with federal troops? What ever happened to state powers and federalism?

Rick; Where is this coming from?

Peter: The very top

Christine: Bill Barr

Peter: Higher

Rick: The president:

Peter: Higher

Rick: Jared Kushner

Peter: Yes sir.

Christine: What do you suggest? Fedral troops can't just waltz in and take over...although they almost did that this past summer...

Peter: We have to find some justification. I know martial law was declared in Hawaii after Pearl Harbor.

Christine: That was after an attack by an enemy hostile force.



Rick: We would have to assert that a hostile force, Russia, attacked our election. I don't think that is the message the administration wants to send. Maybe if China was the hostile force...

Christine: Besides, Congress will never let us get away with it

Rick: Yea, the House will vote against us but the Senate...HA

Christine: I don't think it will work. Look at *Youngstown Sheet & Tube Co. v Sawyer*. Congress would have to explicitly authorize it. Further, Congress has extensively determined whether or not the military can be used, mainly through the Posse Comitatus Act.

Rick: How about the Insurrection Act. Those people in Portland looked awfully insurrective, breaking windows and pulling down statues of presidents. And, Portland has been deemed an anarchist jurisdiction by the Department of Justice...

Christine: The role of the federal troops can only be to assist civilian authorities.

Peter: Now I read somewhere that Federal troops could be used under the insurrection act if the violence hinders the execution of state and/or federal laws or that the people are being deprived of a Constitutional right.

Christine: Are we going to argue that the violence is prohibiting people from voting?

Rick: I like it. We can grab the ballot boxes and let the government determine which ballots are not fraudulent and count only those. But why stop with just Portland? Can we do this in all those darned blue states?

Peter: We will never get away with it in Congress

Christine: Until Congress passes some legislation clarifying the president's power to declare martial law and under the insurrection act, it might work...he just might try.

## Martial Law

1. Generally speaking
  - a. Displacement of civilian authorities by the military – three categories
    - i. First, Non-law enforcement functions
      1. Military helicopters used to conduct search-and-rescue missions after Hurricane Katrina
    - ii. Second, Law enforcement functions, where military supplements existing law enforcement activities
      1. Troop deployment to assist LAPD with suppression of 1992 LA riots
    - iii. Third, the most extreme. Military takes place of civilian government and most, if not all, aspects of everyday civilian life
  - b. Concept has never been well-understood
    - i. Not in constitution
    - ii. No acts of Congress that directly address martial law, but, for example, Congress has passed
      1. Insurrection Act of 1807 –
        - a. President may deploy U.S. military and federalized National Guard troops within the United States in particular circumstances, such as to suppress civil disorder, insurrection and rebellion.
        - b. President must first publish a proclamation ordering insurgents to disperse
          - i. Proclamation – a statement by a president on an issue of public policy, a quasi-directive . Not generally an act of law but can trigger the implementation of a law like the insurrection act of 1807, by recognizing that the circumstances of the law have been realized
          - ii. Official document, not a tweet, not a public statement
      2. Posse Comitatus Act of 1878
        - a. As a general rule, it's unlawful for federal military forces to engage in civilian law enforcement activities, even if they are merely supplementing rather than supplanting civilian authorities EXCEPT when doing so is expressly authorized by Congress.
        - b. Originally passed to evict troops from Southern states enforcing reconstruction activities, it's generally been suspended for limited purposes for purposes like school desegregation, e.g. the Little Rock Nine
      3. 2007 Defense Authorization Act allows president to employ the armed forces to “restore public order and enforce the laws of the

United States when, as a result of a natural disaster, epidemic, public health emergency, etc

a. Repealed in 2008 because it was just an authorization act

- iii. Only addressed by Supreme Court a handful of times, and vaguely at that
  - 1. Court has said States *may* declare but have been largely silent as to why, when, and how it may be declared
  - 2. Court has never directly held that federal govt has power to impose.

## 2. Court Cases

a. Supreme Court

b. *Luther v. Borden* – States have the power to declare martial law

- i. Otherwise known as the birth of the political question doctrine and/or the case where the Supreme Court said that it had no power to enforce the Guaranty Clause of Article 4, Section 1.
- ii. Dorr War in Rhode Island – revolution to overthrow royal charter government. RI General Assembly declared martial law and asked state militia to suppress rebellion
- iii. Taney – martial law is an essential part of a state's right to defend itself and is inherent to all sovereign governments
  - 1. Dicta suggests that federal govt may declare
- iv. Does not explain legal basis of martial law, allowable scope, when it can be declared, or who can declare it

c. Civil War Cases

i. *Ex Parte Milligan*

- 1. Lambdin Milligan was a state's rights fan who was arrested in Indiana and tried in a military court in 1864 for offering aid and comfort to Confederates, inciting rebellion and conspiring against the US Govt. Convicted and sentenced to hang
- 2. Milligan's attorney filed a writ of HC
- 3. Supreme Court - "martial rule can never exist when the courts are open," and martial law limited to where "war really prevails."

d. *Duncan v. Kahanamoku*, 327 U.S. 304, 309–10 (1946).

- i. Hawai'i had been under martial law since the Japanese attack on Pearl Harbor in December 1941
- ii. August 1942 - Military police in Honolulu arrest a man named Harry White for embezzlement of funds from a client. White brought before military provost court. White's attorney requested jury trial and time to prepare a defense and his motions were rejected by the presiding officer. Within five days, White had been tried (without a jury), convicted, and sentenced to five years in prison.
- iii. Court – military trial unconstitutional because the civil courts could function and there was no military necessity for the trial to take place in a tribunal.

3. Declared many times over the course of US History
  - a. Not recognized as an emergency power until mid-19<sup>th</sup> century, was considered outrageous before then.
    - i. Outrage after Jackson continued martial law 2 months after the Battle of New Orleans. Louisiana Supreme Court described as “trampling upon the Constitution and laws of our country.” *Johnson v. Duncan et al. Syndics*, 1 Harr. Cond. Rep. 157–70 (1815)
      1. Jackson declared on December 31, 1814
      2. Battle on January 8, 1815
      3. Jackson instituted martial law because he worried about the loyalty of NOLA’s creole and Spanish inhabitants
      4. State senator Louis Louaillier wrote an anonymous piece criticizing martial law, at which point AJ sought him out and had him imprisoned.
        - a. March 1815 - US District Court Judge Dominic A. Hall signed a writ of HC for Louaillier
        - b. Jackson refused to relent and arrested Hall
        - c. Jackson summarily executed 6 members of his conscripted militias that attempted to leave NOLA
        - d. State judge Joshua Lewis, also a member of the militia, intervened. Signed HC against Jackson, his commanding officer, seeking Hall’s release.
      5. Court - that the powers vested in us by law can be suspended by none but legislative authority
    - ii. Secretary of War told Jackson that martial law had no legal existence in US outside the Articles of War (predecessor to UCMJ)
4. Use
  - a. 1861-1945 – Martial Law declared 70 times
  - b. Use by Feds
    - i. Declared by Generals more often than the president
    - ii. Only declared a handful of times since the end of reconstruction
      1. Most recently – in Hawai’i after Pearl Harbor
  - c. Use (and misuse) by states
    - i. States have declared martial law more frequently
      1. Used (mostly) by Governors and imposed on a city, county, or group of counties
        - a. Violent civil unrest (Colorado Labor Wars)
        - b. but more often to break strikes on behalf of business interests.
        - c. Natural disaster
    - ii. Sometimes mayors and generals within National Guard

- iii. Last declared in 1966, when the governor of California imposed it to suppress unrest in the Hunters Point neighborhood of San Francisco after a white police officer shot a black teenager.
  - iv. Misuse
    - 1. 1933 – GA governor Eugene Talmadge declared martial law around headquarters of State Highway Board. Talmadge wanted to remove some of the Highway Board’s commissioners but had no legal authority to do so. Martial law forced some of them out.
    - 2. 1931 – TX Governor Ross Sterling imposed martial law on several counties in TX in opposition to federal regulation limiting oil production by private well operators. Sterling claimed federal courts had no power to review his decision
      - a. “There is no avenue to escape from the paramount authority of the Federal Constitution.” *Sterling v. Constantin*, 287 U.S. 378, 398, 403–4 (1932)
- 5. Legal authority
  - a. Many important related legal developments since last Supreme Court case (*Duncan*)
    - i. *Youngstown Sheet and Tube*
    - ii. *Mapp*
    - iii. *Miranda*
    - iv. War Powers Resolution
    - v. Guantanamo Bay cases
  - b. Jackson’s concurrence in *Youngstown* is likely the best tool for analyzing current issues around martial law
    - i. Courts show varying degrees of deference to executive actions by viewing the action through the lens of Congress’ approval (or disapproval) of the executive’s action. Actions fall into three “zones” of conduct:
      - 1. Congress has authorized president’s conduct (maximum deference)
      - 2. Congress has said nothing aka “zone of twilight” – Courts look to Constitution for independent authority for action
      - 3. Conduct is contrary to laws Congress has passed – executive action is not permissible unless Congress has overstepped its powers.
        - a. But would Court have standing to review Constitutionality of separate act of Congress in this instance?
- 6. Is it martial law?
  - a. COVID concerns
    - i. “emergency powers” vs. martial law
    - ii. Likely not martial law. Governors have wide latitude to declare states of emergency and fundamentally change everyday life for all of us. Emergency powers usually do not approach martial law.
    - iii. *Jacobson v. Massachusetts* (1905)

1. "in every well ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand" and that "[r]eal liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others."
- iv. Oregon - ORS 401.068 –
    - a. During a state of emergency, the Governor has complete authority over all executive agencies of state government and the right to exercise, within the area designated in the proclamation, all police powers vested in the state by the Oregon Constitution in order to effectuate the purposes of this chapter.
    - b. During a state of emergency, the Governor has authority to suspend provisions of any order or rule of any state agency, if the Governor determines and declares that strict compliance with the provisions of the order or rule would in any way prevent, hinder or delay mitigation of the effects of the emergency.
    - c. During a state of emergency, the Governor has authority to direct any agencies in the state government to utilize and employ state personnel, equipment and facilities for the performance of any activities designed to prevent or alleviate actual or threatened damage due to the emergency, and may direct the agencies to provide supplemental services and equipment to local governments to restore any services in order to provide for the health and safety of the citizens of the affected area.
  - v. *Contra*, Gretchen Whitmer's orders based on the Emergency Management Act of 1976 overturned by Michigan Supreme Court
  - b. Deputizing PPB as federal officers, DHS presence in downtown
    - i. Deputizing
    - ii. DHS
    - iii. First who are they authorized to act as
      1. Federal law enforcement
    - iv. President Trump has hinted that he would use a proclamation to get us anarchists and insurgents to stop in Portland, but hasn't yet, because, again, a tweet is not a proclamation
  - c. Segue – would that do any good? This anarchist jurisdiction has a flair for responding to federal authorities – make it a little more clear – cut to Athena clip

## Sources

1. Brennan Center – 8/20/20 - [Martial Law in the United States: Its Meaning, Its History, and Why the President Can't Declare It](#)
2. <https://www.brennancenter.org/our-work/analysis-opinion/can-president-declare-martial-law-response-coronavirus>



# “STAND YOUR GROUND” KILLS

How These NRA-Backed Laws Promote Racist Violence

JULY 2020





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# Introduction

In July 2018 near Clearwater, Florida, 28-year-old Markeis McGlockton was killed in front of his high school sweetheart and their three young children by a man who claimed that he was standing his ground.<sup>1</sup> Markeis was unarmed and Black. His shooter was armed and white.

**The fatal shooting of Markeis McGlockton represents just one of many tragedies in which a dangerous transformation of the law of self-defense—which proponents have branded as “Stand Your Ground”—has been used to justify murderous vigilantism, especially against Black men.**

Markeis worked nights and watched his kids during the day while his longtime girlfriend, Britany, was at work.<sup>2</sup> He liked to rap and make music videos with friends, and had recently taken up painting. He was rarely seen without his children in tow.<sup>3</sup> The couple didn’t know it yet, but Britany was pregnant with their fourth child.<sup>4</sup>

On a Thursday afternoon in July, the family drove to a Circle A convenience store to buy chips and drinks. To avoid maneuvering around the trucks parked in front of the store, Britany pulled her car into a handicap spot and left it running while Markeis and their five-year-old son went inside. She and their other two children, an infant and a three-year-old, remained in the car.

Less than a minute later, 47-year-old Michael Drejka drove into the parking lot and parked his SUV perpendicular to Britany’s car.<sup>5</sup> He began to walk around the vehicle and peer into the windows, looking for handicap tags. He then approached Britany’s driver side window, yelling and motioning with his hands. Fearful for her family’s safety, Britany cracked the window and asked him what his problem was. When the man yelled at her about parking in a handicap spot, she told him to mind his own business and said her boyfriend went into the store briefly to get snacks.

Another customer arrived and observed an irate and confrontational Michael arguing with Britany. The customer thought about intervening on Britany’s behalf but instead saw Markeis paying at the counter, and told him there was an “altercation” outside the store that “he might want to get involved” in. When Markeis arrived outside, Britany was exiting the vehicle.<sup>6</sup> Markeis shoved Michael away from her and onto the ground.

Less than three seconds later,<sup>7</sup> while still on the pavement, Michael unholstered a .40 caliber handgun and pointed it directly at Markeis. Security camera footage shows that Markeis immediately backed at least 10 feet away from him,<sup>8</sup> and had begun to turn away when Michael fired a single shot into Markeis’s chest.

Markeis staggered into the store and collapsed in front of his five-year-old son, who watched, screaming, as his mother tried to apply pressure to the wound to stop the bleeding. Despite Britany's efforts, she couldn't save Markeis's life.<sup>9</sup>

A day later, Pinellas County Sheriff Bob Gualtieri announced that his agency would not arrest Michael because he believed shooting Markeis was “within the bookends of ‘stand your ground’ and within the bookends of force being justified” under Florida law.<sup>10</sup> Though he conceded that security camera footage showing Markeis backing away from the confrontation “gave him pause,” the sheriff pointed to Michael's claim that he feared he was going to be “reattacked” as justification for using lethal force under Florida's law.<sup>11</sup>

Reporters soon discovered that Michael had angrily confronted a truck driver over the same parking spot just three months earlier. He had directed racial slurs at the driver and threatened to shoot him. Michael later called the truck driver's employer and told him “he was lucky that he didn't blow his employee's head off.” Six years earlier, the sheriff's office had also responded to two separate road rage incidents in which Michael Drejka had drawn and pointed his handgun at other drivers, first at two teenagers who had cut him off by stopping at a yellow light, and then at a woman he said was driving too slowly through a school zone.

Despite this history, Sheriff Gualtieri held a press conference nearly two weeks after Markeis's death to reiterate his belief that Florida's Stand Your Ground law provided Michael with immunity from arrest.<sup>12</sup> **Our analysis below details how these laws—currently enacted in 27 states—remove the traditional obligation to de-escalate a confrontation and avoid using lethal force in public by stepping away (or “retreating”) when it is safe to do so.**

On August 1, one day after the press conference, the sheriff referred the case to the local state attorney's office for review.<sup>13</sup> Based on the report submitted by a detective in the sheriff's office recommending that Michael be arrested for manslaughter, the state's attorney brought charges on August 13,<sup>14</sup> and ultimately won a conviction—according to jurors, after multiple votes, and almost entirely because a security camera had captured video footage of Markeis backing at least 10 feet away before Michael shot him.<sup>15</sup>

Justice was delayed in this case, even with security camera footage of a retreating unarmed victim, multiple credible eye witnesses, and a shooter's known history of threatening violence with a firearm. Law enforcement and prosecutors have at least initially cited Stand Your Ground laws in determining not to arrest the killers of other young men and boys of color, including Trayvon Martin, Jordan Davis, Jamonta Miles, Daniel Adkins, Jr., and more recently, Ahmaud Arbery, to name only a few.<sup>16</sup> In countless other cases, justice was not just delayed but denied.

A growing body of research has established that Stand Your Ground laws lead to significantly more killing and have no deterrent effect on other crimes. These laws suffer from pervasive racial and gender bias in their application, deepening disparities in the legal system and disproportionately justifying the use of violence by people who are white and male against people who are not.

Giffords Law Center and the SPLC Action Fund stand with partners and allies like Amnesty International, Cities United, the Community Justice Action Fund, The Dream Defenders, the NAACP, among others, who have led calls to dismantle Stand Your Ground nationwide.<sup>17</sup> **We urge state lawmakers to repeal these laws in the 27 states where they have been enacted and to pass laws overturning harmful court decisions that have imposed Stand Your Ground standards in eight other states.** We hope the information and research provided below will help inform and motivate advocates and lawmakers to prioritize the sanctity of human life and equal justice in the law of self-defense.



*Left: Markeis McGlockton, who was shot and killed by Michael Drejka in July 2018. Right: Britany Jacobs, Markeis's girlfriend, along with two of their children.*

## Stand Your Ground Laws Distort the Law of Self-Defense

Stand Your Ground laws alter traditional laws on self-defense to permit the use of force, including deadly force, in a broader range of situations in public. In other words, they classify more killings as justified and punish fewer as murders.

These laws are at best unnecessary, and at worst, extremely harmful. Centuries-old legal principles and codified self-defense laws across the US have long affirmed an individual's right to use proportionate physical force to defend him or herself and others against imminent violence. Self-defense laws in the US typically justify use of

*lethal* force in situations in which it is objectively reasonable for a person to believe that lethal force is necessary to prevent imminent death or serious bodily harm to themselves or another person.

Traditionally, these laws have made clear that taking human life is not justified if it can be proven beyond reasonable doubt that the person could have safely de-escalated the situation by simply stepping away from a confrontation.<sup>18</sup>

## **SELF-DEFENSE LAWS ARE PRACTICAL; PEOPLE ARE GENERALLY EXPECTED TO STEP AWAY FROM AN INCIDENT ONLY IF THEY KNOW THEY CAN DO SO WITH COMPLETE SAFETY.<sup>19</sup>**

In most US jurisdictions, court precedents and/or state laws have carved out an exception to this duty to de-escalate called the Castle Doctrine. Based on the theory that “a person’s home is their castle,” this legal principle has created a presumption that individuals are justified in using force against someone breaking into their occupied home, without having to consider options such as leaving the home to avoid a threat or confrontation.<sup>20</sup>

**In a nation with more guns than people,<sup>21</sup> even this relatively narrow presumption can result in predictably tragic assumptions and deaths,** like when law enforcement agents act on no-knock warrants and storm into people’s homes unannounced,<sup>22</sup> or when people mistake a lost or intoxicated person wandering into their home for a burglar and open fire.<sup>23</sup> People have also attempted to invoke the Castle Doctrine as a defense for racist murders of people who didn’t unlawfully enter their homes. Recent tragic examples include incidents where young Black people were shot after knocking on a stranger’s door to ask for directions,<sup>24</sup> seeking help after a car accident,<sup>25</sup> and walking across a front yard after leaving a neighbor’s party.<sup>26</sup>

More recently, lobbying organizations like the National Rifle Association and the American Legislative Exchange Council have pushed for even more extreme transformations of self-defense laws to further tilt the scales of justice in favor of killing. In practice, this has meant providing the largely white male base of these organizations greater authority to use lethal force in more places with impunity.<sup>27</sup>

Some states have expanded the Castle Doctrine’s boundaries to include the entire residential property, in some cases permitting the use of deadly force to prevent the commission of any felony on that property,<sup>28</sup> including, for instance, breaking into a car in the driveway. Mississippi law states that “the killing of a human being” is justifiable when trying to prevent another person from committing a felony in the immediate premises of a dwelling, vehicle, or place of business or employment that is occupied by the person using lethal force.<sup>29</sup> Other states have created a presumption that lethal force is justified against burglars or intruders in an occupied workplace, business, or vehicle, in addition to homes.<sup>30</sup>

A few states have gone further by authorizing the use of lethal force against people breaking into *unoccupied* vehicles and businesses or committing certain property theft crimes anywhere else.<sup>31</sup> Florida law, for instance, states that an individual is justified in using deadly force if he or she reasonably believes that such conduct is necessary to prevent the imminent commission of felony burglary, including cases where an unarmed individual unlawfully enters an unoccupied vehicle anywhere it may be.<sup>32</sup>

Texas law goes even further still, authorizing use of deadly force to protect or retrieve property of *any* value in any place, if a person reasonably believes that deadly force is immediately necessary to prevent “theft during the nighttime” or to prevent someone from fleeing immediately after a nighttime theft, as long as the person reasonably believes the property cannot be recovered any other way.<sup>33</sup> In 2013, a jury acquitted a Texas man who shot and killed a woman he had hired as an escort because he claimed she had committed “theft during the nighttime” by leaving with his money without having sex with him. The jury found that Texas’s law allowed the man to use deadly force to recover his money.<sup>34</sup>

**Most significantly, a majority of states have now enacted Stand Your Ground laws applicable in all public spaces, starting with Utah in 1994<sup>35</sup> and then, at the behest of the NRA, Florida in 2005.<sup>36</sup>** Twenty-seven states have passed Stand Your Ground legislation into law and in eight more, court decisions have similarly altered the law of self-defense.<sup>37</sup> In addition to removing the traditional duty to safely retreat in public, these laws also usually declare that people perceiving a threat of harm have an affirmative right to “stand [their] ground” if they are not engaged in criminal activity and are in any place where they have a right to be. Some states, including Florida, have additional provisions intended to further discourage the arrest and prosecution of people who claim to have stood their ground in self-defense.

Stand Your Ground laws codify a standard for the use of force (including deadly force with a firearm) that is confusingly vague and therefore susceptible to highly uneven application by law enforcement and the judicial system, while also unmistakably signaling support for a “shoot first, ask questions later” culture of impunity around taking human life. These laws often provide the last person left standing with what the American Bar Association has called a “low-cost license to kill.”<sup>38</sup>

The gun lobby has continued to mount a campaign to pass Stand Your Ground laws in every state<sup>39</sup> as part of a larger push to promote a gun culture centered around “do-it-yourself-security” through hypervigilant armed citizenship, often as an expression of white male identity, and extending into public as well as the home.<sup>40</sup>



Until the late 20th century, nearly every state placed significant restrictions on an individual's ability to carry weapons, especially concealed firearms, in public.<sup>41</sup> In the 1960s, the NRA, as well as early gun control supporters, even endorsed legislation to broaden these restrictions in response to calls by the Black Panthers for Black people to arm and defend themselves.<sup>42</sup> The NRA describes its "right to carry" movement as beginning in Florida in 1987, when the state enacted a new law requiring state authorities to provide a concealed carry license to any applicant who met specific (minimal) criteria. The NRA notes that Florida's "shall issue" law soon "became the model for similar laws thereafter adopted in 33 other states."<sup>43</sup>

**It was no coincidence that the NRA aggressively pushed for weaker public carry limitations in the same places and around the same time as Stand Your Ground laws.<sup>44</sup>** Until recently, the percent of American households with firearms was shrinking drastically.<sup>45</sup> As cultural shifts led fewer Americans to participate in recreational hunting and sport shooting, firearm sales were in steep decline until the firearm industry adapted by developing and selling large numbers of semiautomatic pistols aggressively marketed for self-defense.<sup>46</sup> In 1996, the NRA's chief lobbyist claimed credit for generating new gun sales with an aggressive campaign marketing new concealable, high-powered handguns: "The gun industry should send me a

*Black Panther Party members demonstrate outside a New York City courthouse in 1969.*



David Fenton/Getty Images

basket of fruit,” she said. “Our efforts have created a new market.”<sup>47</sup> By 2005, previously declining gun manufacturers were boasting about transitioning to an “aggressive growth mode” by refocusing their marketing around “extensive expansion into the handgun market,” “demand creation,” and fear-based messaging around the need for guns for personal safety.<sup>48</sup> Between 1999 and 2017, the percentage of Americans who named self-defense as their primary reason for owning a gun rose from 26% to 67%.<sup>49</sup>

By successfully lobbying for major changes to states’ longstanding gun safety and self-defense laws, the gun industry encouraged more people, especially white men,<sup>50</sup> to acquire firearms, arm themselves in public, and use those firearms with less accountability. **In the seven years after Florida enacted its Stand Your Ground law, the number of people who received permits to carry concealed weapons in public tripled.**<sup>51</sup> Under the state’s intentionally lax standards, permits were issued to Markeis McGlockton’s killer, Michael Drejka, who had a history of brandishing and threatening to use his firearm in road rage incidents; Jordan Davis’s killer, Michael Dunn, who had a history of domestic violence; and Trayvon Martin’s killer, George Zimmerman, who had a history of domestic violence and assaulting a police officer, and who is reportedly still authorized to carry lethal weapons in public even after he killed Trayvon Martin and was later convicted of criminally stalking someone else.<sup>52</sup>

As a member of the US Commission on Civil Rights wrote in a February 2020 report, this “deadly cocktail of Stand Your Ground and concealed-carry is a license to kill.”<sup>53</sup> And organized hate groups have taken note. Leaked chat logs revealed that when planning an armed march in Charlottesville, Virginia, in August 2017, neo-Nazi and white supremacist groups discussed the applicable rules for “shooting and killing people under Stand Your Ground.”<sup>54</sup> Soon after, in connection with planned protests against the white nationalist Richard Spencer’s appearance at the University of Florida, right-wing militants discussed plans to come to the location “to test Florida’s Stand Your Ground law.”<sup>55</sup>

## Stand Your Ground Laws Exacerbate Systemic Racism

In 2013, President Obama asked the nation:

**“If Trayvon Martin was of age and armed, could he have stood his ground on that sidewalk? And do we actually think that he would have been justified in shooting Mr. Zimmerman who had followed him in a car because he felt threatened?”**<sup>56</sup>

Statistically speaking, the answer is no. Expert testimony submitted to the US Commission on Civil Rights examined FBI data in over 2,600 homicide cases to determine the likelihood that a fatal shooting would be deemed justified when, as with George Zimmerman’s case, a civilian male shot and killed one other male he did



not know. In Stand Your Ground states, these homicides were ruled justified in 45% of cases involving a white shooter and Black victim, but just 11% of cases involving a Black shooter and white victim.<sup>57</sup>

While Stand Your Ground laws signal the state's unmistakable support for armed public confrontations, these laws are also vague enough to allow for highly uneven application by law enforcement and the legal system. An examination of hundreds of Stand Your Ground cases in Florida by the *Tampa Bay Times* revealed that "cases with nearly identical factual circumstances resulted in inconsistent and opposite outcomes where one defendant was afforded criminal immunity while another was convicted and given a lengthy sentence."<sup>58</sup> Researchers confirmed that these inconsistencies were not arbitrary: **studies have shown clearly and repeatedly that race and gender are significant factors explaining how otherwise similar cases led to "opposite outcomes."**<sup>59</sup>

It should be noted that the vast majority of interpersonal gun violence in the US involves a male victim and shooter of the same race,<sup>60</sup> and that the vast majority of concealed weapon permit holders are white men.<sup>61</sup> It is perhaps unsurprising then that research suggests that Stand Your Ground laws have caused especially significant increases in homicide deaths involving white male victims compared to other demographic groups.<sup>62</sup> However, these laws have also been used to disproportionately justify use of deadly force by white men as well, especially when that force is used against Black Americans.

Across the US, killings are much more likely to be ruled justified when the perpetrator is white or the victim is not.<sup>63</sup> Research suggests that Stand Your Ground laws deepen these vast racial disparities in the legal system.<sup>64</sup> The number of homicides of Black people deemed justifiable more than doubled in Stand Your Ground states between 2005 and 2011, while remaining unchanged in the rest of the country.<sup>65</sup>

An analysis of Stand Your Ground cases in Florida found "striking evidence" of racial bias.<sup>66</sup> Defendants invoking Stand Your Ground defenses were twice as likely to be convicted for killing white victims compared to non-white victims.<sup>67</sup> In Florida, Black adolescents comprised 63.5% of all adolescent firearm homicide victims before passage of the state's Stand Your Ground law. After the law was enacted, that number rose to 72%.<sup>68</sup>

**THE URBAN INSTITUTE'S ANALYSIS OF STAND YOUR GROUND CASES ACROSS MULTIPLE STATES FOUND THAT AFTER CONTROLLING FOR RELEVANT FACTORS, "A WHITE (CIVILIAN) SHOOTER WHO KILLS A BLACK VICTIM IS 350 PERCENT MORE LIKELY TO BE FOUND TO BE JUSTIFIED THAN IF THE SAME SHOOTER KILLED A WHITE VICTIM."**<sup>69</sup>

These disparate outcomes reflect the degree to which racism and implicit bias shape judgements about the “reasonableness” of a person’s belief that they are in danger in public.<sup>70</sup> Modern research continues to show conclusively that many Americans are quicker to associate Black teenagers and men with suspicion, criminality, and violence. Research published in 2017 by the American Psychological Association, for instance, showed that people tend to perceive Black men as larger, stronger, and more muscular than white men of the exact same height and weight.<sup>71</sup> Other similar studies showed that police officers were less able to distinguish harmless objects from guns when they were held by Black subjects.<sup>72</sup>

When the law encourages people with these racist biases to carry deadly weapons in public and to more readily use those weapons, the consequences are predictably deadly and unequal.

## Stand Your Ground Laws Exacerbate Gender Bias

Researchers have also found “striking evidence” of gender bias in the application of Stand Your Ground laws.<sup>73</sup> Domestic violence advocates have long noted that the Castle Doctrine has historically envisioned situations “in which a stranger violates the sanctity of the home,” but that this conception overlooks the fact that women are much more likely to be attacked by an intimate partner, who often shares the same dwelling.<sup>74</sup> Female survivors of domestic violence also often “face a persistent skepticism regarding both their accounts of abuse and their recitations of harm,”<sup>75</sup> making it less likely that the legal system will believe them when they claim to have acted in self-defense. **An analysis of Florida cases found that female defendants accused of killing a partner were twice as likely to be convicted as male defendants in comparable cases.**<sup>76</sup>

Perhaps the best known example of this bias, intersecting with racial bias, came in the prosecution and conviction of Marissa Alexander. Marissa, a 31-year-old Black mother in Florida, was initially sentenced to 20 years in prison after firing a warning shot into a wall in the direction of her abusive husband after he threatened to kill her, violated a domestic violence restraining order, and tried to corner her in a bathroom.<sup>77</sup> Courts rejected her attempt to invoke a Stand Your Ground defense. The state attorney argued that since Marissa had fled the bathroom and returned to face her husband, she “was not in fear” when she fired her weapon, but was instead “angry.”<sup>78</sup>

In one 2016 study, a statistical model based on Florida Stand Your Ground cases estimated that there was a 55% chance that a defendant would be convicted in situations matching the key objective facts of Marissa Alexander’s case.<sup>79</sup> The model also found that in a hypothetical case in which all other factors were exactly the same, except the shooter was male, the estimated chance of conviction would fall to 14%. In other words, according to this model, Marissa Alexander’s odds of going to prison for firing a warning shot were nearly four times higher because she was a woman.

At least anecdotally, transgender men and women also appear to face unequal access to the Stand Your Ground defense. In a notable case in Georgia, in 2011, a 20-year-old Black trans man named Ky Peterson was sentenced to 20 years in (a women's) prison for fatally shooting a man who had knocked him unconscious, dragged him to an abandoned trailer, and started raping him.<sup>80</sup> As an LGBT rights attorney remarked about the case, "In so many ways, our [nation's] conception of victimhood has always been taken away from people of color and taken away from gender-nonconforming people and taken away from women."<sup>81</sup>

Instead of expanding a right to self-defense for victims of violence, cases like these have led legal experts to observe that "the real achievement" of Stand Your Ground legislation is "the normalization and promotion of (often white) male violence in an ever-expanding number of scenarios."<sup>82</sup>

## Stand Your Ground Laws Lead to More Killing

Proponents of Stand Your Ground laws have argued that these laws would decrease homicides and deter other crimes.<sup>83</sup> In a survey of policy experts by the nonpartisan Rand Corporation, pro-gun rights panelists estimated that enacting a Stand Your Ground law would lead to a 4% reduction in gun homicides overall and a 5% reduction in other violent crimes.<sup>84</sup>

The research clearly shows that they were wrong. **Not only do Stand Your Ground laws not achieve their proffered goal of deterring crime—they lead to spikes in homicides and in the number of killings that are deemed justified, without any deterrent effect on other crimes.**

As one of the first states to implement a Stand Your Ground law, Florida has been an important and tragic test case. Multiple studies have shown that Florida's Stand Your Ground law escalated violence across the state.

### Researchers found:

- A 32% INCREASE IN RATES OF FIREARM HOMICIDE AND A 24% INCREASE IN RATES OF HOMICIDE OVERALL.<sup>85</sup>
- A 45% INCREASE IN FIREARM HOMICIDES AMONG ADOLESCENTS.<sup>86</sup>
- A TRIPLING OF THE NUMBER OF HOMICIDES CLASSIFIED AS "JUSTIFIABLE" IN THE FIVE YEARS AFTER FLORIDA ENACTED ITS LAW.<sup>87</sup>
- IN 79% OF CASES, THE ASSAILANT COULD HAVE RETREATED TO AVOID THE CONFRONTATION, AND IN 68% OF CASES, THE PERSON KILLED WAS UNARMED.<sup>88</sup>
- THE LARGEST NEGATIVE IMPACT ON HOMICIDES OCCURRED IN NEIGHBORHOODS THAT INITIALLY HAD THE LOWEST HOMICIDE RATES.<sup>89</sup>

As Stand Your Ground laws spread from Florida across the country, researchers have found that these laws are also associated with increases in firearm homicides, hospitalizations, and injuries elsewhere, without the promised benefits in crime

reduction.<sup>90</sup> Cases involving lethal force are significantly more likely to be ruled justified in Stand Your Ground states than in other states.<sup>91</sup> One study concluded that there was “compelling evidence that by lowering the expected costs associated with using lethal force, [Stand Your Ground] laws induce more of it.”<sup>92</sup>

**More specifically, researchers have found that:**

- **STAND YOUR GROUND LAWS ARE ASSOCIATED WITH SIGNIFICANT INCREASES IN FIREARM INJURIES RESULTING IN EMERGENCY ROOM VISITS AND INPATIENT HOSPITALIZATIONS.**<sup>93</sup>
- **IN ANY GIVEN MONTH, APPROXIMATELY 30 TO 50 PEOPLE ACROSS THE COUNTRY ARE KILLED AS A RESULT OF STAND YOUR GROUND LAWS.**<sup>94</sup>
- **IN 21 STATES THAT ADOPTED STAND YOUR GROUND LAWS, OVERALL HOMICIDES INCREASED BY AROUND 8%, WITHOUT ANY CORRESPONDING DETERRENT EFFECT ON VIOLENT CRIMES LIKE BURGLARY, ROBBERY, OR AGGRAVATED ASSAULT.**<sup>95</sup>

In a meta-analysis of this research published in April 2020, the Rand Corporation recommended that “states with stand-your-ground laws should consider repealing them as a strategy for reducing firearm homicides.”<sup>96</sup> And in February 2020, a member of the US Commission on Civil Rights concluded that “under both the increased deterrence and decrease in homicide policy rationales, Stand Your Ground in practice appears to fail miserably on the national level.”<sup>97</sup>

## Conclusion

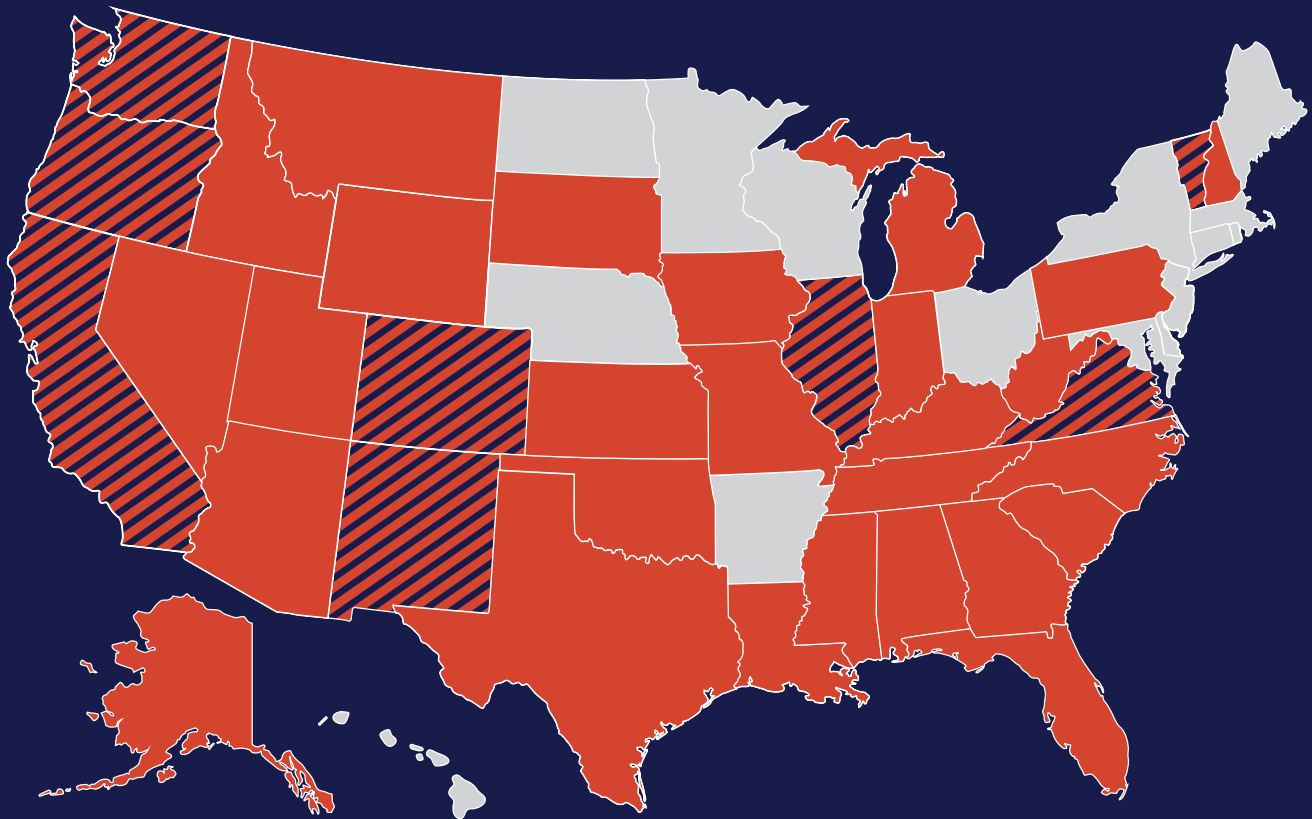
In 2012, after the killing of Trayvon Martin, author Ta-Nehisi Coates wrote about the killing of another Florida resident, Brandon Baker.<sup>98</sup> Late at night, a man named Seth Browning became concerned about Brandon’s driving and followed him in his car for several miles to get his license plate number. Brandon pulled over, got out of his pickup truck, and, according to Seth Browning, aggressively approached his car. Seth used pepper spray on Brandon and his twin brother. When Brandon reached into Seth’s vehicle and punched him, Seth pulled out a gun and fatally shot him.

When reviewing the facts of Stand Your Ground cases, Coates wrote, “what you find is people with very little incentive to de-escalate.”<sup>99</sup>

**What we have in Florida—and doubtlessly in other parts of the country—is the state relinquishing a crucial aspect of meting out justice. The logic here militates toward getting a gun . . . The logic incentivizes an armed citizenry where the beneficiary of justice is simply the last man standing. Your side of the story is irrelevant if you are dead. Perhaps that is the point.**<sup>100</sup>

As a policy experiment, Stand Your Ground has failed. In a nation awash with increasingly lethal firearms, weak standards for carrying them in public, and systemic racism and sexism, these laws make us less safe and less equal. They encourage a trigger-happy culture of anxious vigilantism that cheapens the value of human life. And they deepen vast and harmful disparities in our legal system. To honor those our nation has lost and to avert future violence, we must repeal Stand Your Ground laws state by state and restore the presumption that taking human life should be a last resort—not the first.

# 27 States Have Enacted Stand Your Ground Laws



While 27 states have adopted Stand Your Ground laws, an additional eight remove the duty to retreat through court decisions.

- States with Stand Your Ground Laws
- States with Stand Your Ground standards due to court decisions

# Stand Your Ground State by State

STATE	STAND YOUR GROUND?	DEADLY FORCE AGAINST A FLEEING PERSON?	PROVISIONS LIMITING ARRESTS IN SYG CASES?	DEADLY FORCE AGAINST PROPERTY CRIMES?
ALABAMA	YES			
ALASKA	YES			
ARIZONA	YES			YES
ARKANSAS	NO			
CALIFORNIA	YES*			
COLORADO	YES*			
CONNECTICUT	NO			
DELAWARE	NO			
FLORIDA	YES		YES	YES
GEORGIA	YES			
HAWAII	NO			
IDAHO	YES			
ILLINOIS	YES*			YES
INDIANA	YES			
IOWA	YES			
KANSAS	YES		YES	
KENTUCKY	YES		YES	
LOUISIANA	YES			
MAINE	NO			
MARYLAND	NO			
MASSACHUSETTS	NO			
MICHIGAN	YES			
MINNESOTA	NO			
MISSISSIPPI	YES			YES
MISSOURI	YES			
MONTANA	YES			

STATE	STAND YOUR GROUND?	DEADLY FORCE AGAINST A FLEEING PERSON?	PROVISIONS LIMITING ARRESTS IN SYG CASES?	DEADLY FORCE AGAINST PROPERTY CRIMES?
NEBRASKA	NO			
NEVADA	YES			
NEW HAMPSHIRE	YES			
NEW JERSEY	NO			
NEW MEXICO	YES*			
NEW YORK	NO			
NORTH CAROLINA	YES			AMBIGUOUS
NORTH DAKOTA	NO			
OHIO	NO			
OKLAHOMA	YES		YES	
OREGON	YES*			YES
PENNSYLVANIA	YES			
RHODE ISLAND	NO			
SOUTH CAROLINA	YES	YES	YES	
SOUTH DAKOTA	YES			
TENNESSEE	YES		YES	
TEXAS	YES	YES		YES
UTAH	YES			AMBIGUOUS
VERMONT	YES*			
VIRGINIA	YES*			
WASHINGTON	YES*			
WASHINGTON DC	NO			
WEST VIRGINIA	YES			
WISCONSIN	NO			
WYOMING	YES			

\* STAND YOUR GROUND ESTABLISHED BY COURT CASE, NOT LEGISLATION

# Endnotes

<sup>1</sup> Except where otherwise indicated, the events detailed regarding the killing of Markeis McGlockton are based on information contained in the criminal complaint filed by the Assistant State Attorney for the Sixth Judicial Circuit of Florida against Michael Drejka. See Criminal Complaint Against Michael Drejka, *State of Florida v. Drejka, Michael*, 18-09851-CF (August 13, 2018) <https://hpc.pinellasclerk.org/CaseData/18-09851-CF/40270075.tif>

<sup>2</sup> Kathryn Varn, “Markeis McGlockton: Artist, loving father, and much more than just a hashtag,” *Tampa Bay Times*, August 31, 2018, [https://web.archive.org/web/20180831162817/https://www.tampabay.com/news/publicsafety/Markeis-McGlockton-Artist-loving-father-and-much-more-than-just-a-hashtag\\_171316279](https://web.archive.org/web/20180831162817/https://www.tampabay.com/news/publicsafety/Markeis-McGlockton-Artist-loving-father-and-much-more-than-just-a-hashtag_171316279)

<sup>3</sup> *Id.*

<sup>4</sup> Zachary Sampson, “Girlfriend of victim in Clearwater parking lot shooting is pregnant with his child,” *Tampa Bay Times*, December 21, 2018, <https://www.tampabay.com/news/publicsafety/girlfriend-of-victim-in-clearwater-parking-lot-shooting-is-pregnant-with-his-child-20181221/>.

<sup>5</sup> YouTube, “Video Shows Michael Drejka shoot Markeis McGlockton: 10News WTSP,” August 17, 2019, <https://www.youtube.com/watch?v=01Me0y92pKA>; Terry Spencer, “Attorney: Parking lot shooting of man ‘cold-blooded murder,’” Associated Press, July 26, 2018, <https://apnews.com/611a9cea1d4042edb78d8e2d3d1febd1/Attorney:-Parking-lot-shooting-of-man-‘cold-blooded-murder’>.

<sup>6</sup> *Id.*

<sup>7</sup> Hannah Knowles, “A white Florida man cited ‘stand your ground’ for shooting a black man. A jury found him guilty,” *The Washington Post*, August 25, 2019, <https://www.washingtonpost.com/nation/2019/08/24/white-florida-man-cited-stand-your-ground-shooting-black-man-jury-found-him-guilty/>.

<sup>8</sup> Kathryn Varn and Zachary T. Sampson, “How prosecutors decided to charge Michael Drejka, shooter in controversial stand your ground case,” *Tampa Bay Times*, August 13, 2018, [https://www.tampabay.com/news/publicsafety/crime/How-prosecutors-decided-to-charge-Michael-Drejka-shooter-in-controversial-stand-your-ground-case\\_170858731/](https://www.tampabay.com/news/publicsafety/crime/How-prosecutors-decided-to-charge-Michael-Drejka-shooter-in-controversial-stand-your-ground-case_170858731/).

<sup>9</sup> Cleve Wootson Jr., “He is accused of killing someone in a parking spot dispute. Authorities say he was standing his ground,” *The Washington Post*, July 23, 2018, <https://www.washingtonpost.com/news/post-nation/wp/2018/07/21/hes-accused-of-killing-someone-in-a-parking-spot-dispute-authorities-say-he-was-standing-his-ground/>.

<sup>10</sup> Kathryn Varn, “No arrest in fatal shooting during argument over handicap parking space,” *Tampa Bay Times*, July 20, 2018, [https://web.archive.org/web/20180725192819/http://tampabay.com:80/news/publicsafety/crime/No-arrest-in-fatal-shooting-during-argument-over-handicap-parking-space\\_170174041](https://web.archive.org/web/20180725192819/http://tampabay.com:80/news/publicsafety/crime/No-arrest-in-fatal-shooting-during-argument-over-handicap-parking-space_170174041)

<sup>11</sup> Julia Jacobs, “‘Stand Your Ground’ Cited by Florida Sheriff Who Declined to Arrest Suspect in Killing,” *The New York Times*, July 21, 2018, <https://www.nytimes.com/2018/07/21/us/florida-stand-your-ground.html>

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<sup>15</sup> Kathryn Varn, “We talked to jurors who found Michael Drejka guilty of manslaughter,” *Tampa Bay Times*, August 29, 2019, <https://www.tampabay.com/news/crime/2019/08/29/we-talked-to-jurors-who-found-michael-drejka-guilty-of-manslaughter/>

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<sup>17</sup> See J. Brian Charles, “Ahmaud Arbery Shooting Ignites Fight to Repeal ‘Stand Your Ground’ Laws,” *The Trace*, May 15, 2020, <https://www.thetrace.org/2020/05/ahmaud-arbery-shooting-ignites-fight-to-repeal-stand-your-ground-laws/>; NAACP, “NAACP RELEASES ‘TRAYVON’S LAW’ PRINCIPLES FOR STATE LEGISLATIVE ADVOCACY,” Press Release, July 30, 2013, <https://www.naacp.org/latest/naacp-releases-trayvons-law-principles-for-state-legislative-advocacy-2/>; “Dream Defenders Team Up With NAACP To Fight ‘Stand Your Ground’ Laws,” *HuffPost Black Voices*, September 24, 2013, [https://www.huffpost.com/entry/dream-defenders-naacp-stand-your-ground-laws\\_n\\_3983706](https://www.huffpost.com/entry/dream-defenders-naacp-stand-your-ground-laws_n_3983706)

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<sup>25</sup> Oralandar Brand-Williams, “State Supreme Court denies new trial in porch shooting,” *The Detroit News*, March 9, 2018, <https://www.detroitnews.com/story/news/local/wayne-county/2018/03/09/theodore-wafer-denied-new-trial-porch-shooting/32778751/>

<sup>26</sup> Josh Shaffer, “Murder conviction upheld in racially charged homeowner shooting,” *The News & Observer*, April 3, 2020, <https://www.newsobserver.com/news/local/crime/article241744461.html>

<sup>27</sup> See discussion below regarding evidence that Stand Your Ground laws lead to significantly more homicides being ruled justifiable by white and male shooters compared to similarly situated Black and female shooters. The NRA has also, with few exceptions, emphasized white identity politics and racist fears to maintain its membership instead of seeking, for instance, to increase gun ownership among Black households; speak out in defense of Black people’s equal right to carry and use firearms for self-defense, including after recent high-profile instances when police officers killed Black people, including Philando Castile, for lawfully carrying firearms; or addressing the American legal system’s enormously unequal treatment of self-defense claims. See, e.g., Alex Yablon, “Why the NRA Stands Up for Some Black Gun Owners, But Not Others,” *The Trace*, July 21, 2016, <https://www.thetrace.org/2016/07/nra-black-gun-owners-philando-castile/>; Adam Serwer, “The NRA’s Catch-22 for Black Men Shot by Police,” *The Atlantic*, September 13, 2018, <https://www.theatlantic.com/ideas/archive/2018/09/the-nras-catch-22-for-black-men-shot-by-police/570124/>; Jane Coaston, “The NRA just called its own video network ‘distasteful and racist,’” *Vox*, October 28, 2019, <https://www.vox.com/policy-and-politics/2019/10/28/20936511/nra-nratv-ackerman-mcqueen-lawsuit-complaint>.

<sup>28</sup> Several states’ statutes allow people to use deadly force when “reasonably necessary” to prevent certain non-violent property crimes, including felony thefts or auto burglaries into unoccupied vehicles, stretching these justified homicide laws past their purported ‘self-defense’ goals. These states include, to various degrees, Florida, Illinois, Mississippi, and Texas.

<sup>29</sup> Miss. Code Ann. § 97-3-15(1) (e). See also, *Olier v. Bailey*, 164 So.3d 982, 994 (Miss. 2015) (“Landowners in this State are permitted to use lethal force to resist attempts “to commit any felony . . . upon or in any dwelling . . . or in the immediate premises thereof in which such a person shall be.”)

<sup>30</sup> See, e.g., 2011 Wis. AB 69 (amending Wis. Stat. § 939.48), establishing a legal presumption under Wisconsin law that a person reasonably believed lethal force was necessary, in specified circumstances, if another individual was unlawfully and forcibly entering the person’s dwelling, motor vehicle, or place of business, in which the person was present, if the person knew or reasonably believed that an unlawful and forcible entry was occurring.

<sup>31</sup> Some courts have refused to validate laws justifying killing in defense of property. In 2015, Nevada’s Supreme Court ruled that a literal reading of the state’s law authorizing the use of deadly force to resist any attempted felony, including theft, would be “unreasonable and absurd” unless the person killed had posed a threat of serious bodily injury. *Newell v. State*, 131 Nev. 974, 980 (2015) (interpreting Nev. Rev. Stat. Ann. § 200.160(2)). Theft of items valued above \$1,200 is a felony under Nevada law. Nev. Rev. Stat. Ann. § 205.0835(2)(b).

In 2015, South Dakota’s Supreme Court similarly reaffirmed that it would interpret the state’s law on justifiable homicide to only permit use of deadly force in circumstances involving a danger of serious bodily harm, though the literal text of South Dakota’s statute authorized a person to use deadly force “in the lawful defense of such person, or of his or her husband, wife, parent, child, master, mistress, or servant if there is reasonable ground to apprehend a design to commit a felony . . . and imminent danger of such design being accomplished.” *State v. Birdsheed*, 871 N.W.2d 62, 73 (2015) (citing *State v. Pellegrino*, 577 N.W.2d 590, 596 (1998)).

<sup>32</sup> Fla. Stat. §§ 776.031(2); 776.08; 810.02(4). See also, *Rodriguez v. State*, 837 So.2d 1177, 1178-79 (Fla. Dist. Ct. App. 2003) (rejecting claims that burglaries are only “forcible felonies” if they involve the use or threat of force or violence).

<sup>33</sup> Tex. Penal Code §§ 9.41; 9.42.

<sup>34</sup> Miles Graham, “When You Can Kill in Texas,” *Time*, June 13, 2013, <https://nation.time.com/2013/06/13/when-you-can-kill-in-texas/>

<sup>35</sup> See 1994 Utah HB 13 (amending Utah Code Ann. § 76-2-402).

<sup>36</sup> See Mike Spies, “The N.R.A. Lobbyist Behind Florida’s Pro-Gun Policies,” *The New Yorker*, March 5, 2018, <https://www.newyorker.com/magazine/2018/03/05/the-nra-lobbyist-behind-floridas-pro-gun-policies>; Chris Brown, “Marion Hammer: The NRA Lobbyist Behind Florida’s Stand Your Ground Legislation,” *Media Matters for America*, March 22, 2012, <https://www.mediamatters.org/national-rifle-association/marion-hammer-nra-lobbyist-behind-floridas-stand-your-ground-legislation> NRA-ILA, “NRA Presents ALEC Model Legislation in Grapevine, Texas,” August 12, 2005, <https://www.nraila.org/articles/20050812/nra-presents-alec-model-legislation-in>

<sup>37</sup> See appendix for a full list of these states and citations for relevant statutes and decisions.

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<sup>38</sup> See Mark Obbie, “American Bar Association Calls for Repeal of Stand Your Ground Laws,” *The Trace*, September 19, 2015, <https://www.thetrace.org/2015/09/bar-association-stand-your-ground/>.

<sup>39</sup> Ohio’s legislature scheduled testimony in favor of Stand Your Ground legislation for February 26, 2020, eight years to the day after George Zimmerman shot and killed an unarmed Black teenager named Trayvon Martin and brought Stand Your Ground laws to widespread national attention. Jake Zuckerman, “On Anniversary Of Trayvon Martin Shooting, Ohio Committee Fields ‘Stand Your Ground’ Support,” *Patch*, March 2, 2020, <https://patch.com/ohio/across-oh/anniversary-trayvon-martin-shooting-ohio-committee-fields-stand-your-ground-support>.

<sup>40</sup> See, e.g., Michael Siegel, “How the Firearms Industry Influences US gun culture, in 6 Charts,” *PRI: The World*, February 23, 2018, <https://www.pri.org/stories/2018-02-23/how-firearms-industry-influences-us-gun-culture-6-charts>; Liz Mineo, “The Loaded History of Self-Defense,” *The Harvard Gazette*, March 7, 2017, <https://news.harvard.edu/gazette/story/2017/03/the-loaded-history-of-self-defense/>.

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<sup>42</sup> Thad Morgan, “The NRA Supported Gun Control When the Black Panthers Had the Weapons,” *History.com*, August 30, 2018, <https://www.history.com/news/black-panthers-gun-control-nra-support-mulford-act>.

<sup>43</sup> NRA-ILA, “Concealed Carry | Right-to-Carry,” <https://www.nraila.org/get-the-facts/right-to-carry-and-concealed-carry/>.

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<sup>85</sup> David K. Humphreys, Antonio Gasparrini, and Douglas J. Wiebe, “Evaluating the Impact of Florida’s ‘Stand Your Ground’ Self-defense Law on Homicide and Suicide by Firearm: An Interrupted Time Series Study,” *JAMA Internal Medicine* 177, no. 1 (2017): 44–50.

<sup>86</sup> Michelle Degli Esposti, et al., “Increasing adolescent firearm homicides and racial disparities following Florida’s ‘Stand Your Ground’ self-defence law,” *Injury Prevention* 26 (2020): 187–90.

<sup>87</sup> Marc Fisher and Dan Eggen, “‘Stand Your Ground’ laws coincide with jump in justifiable-homicide cases,” *The Washington Post*, April 7, 2012, [https://www.washingtonpost.com/national/stand-your-ground-laws-coincide-with-jump-in-justifiable-homicide-cases/2012/04/07/g1QAS2v51S\\_story.html](https://www.washingtonpost.com/national/stand-your-ground-laws-coincide-with-jump-in-justifiable-homicide-cases/2012/04/07/g1QAS2v51S_story.html).

<sup>88</sup> Robert J. Spitzer, “Stand Your Ground Makes No Sense,” *The New York Times*, May 4, 2015, <https://nyti.ms/2CcMW4y>.

<sup>89</sup> Benjamin Ukert, Douglas J. Wiebe, and David K. Humphreys, “Regional Differences in the Impact of the ‘Stand Your Ground’ Law in Florida,” *Preventive Medicine* 115 (2018): 68–75.

<sup>90</sup> Stand Your Ground Laws and Homicides, and Injuries (Nat’l Bureau Econ. Research, Working Paper No. 18187, 2012).

<sup>91</sup> See US Commission on Civil Rights, “Examining the Race Effects of Stand Your Ground Laws and Related Issues,” Statement of Commissioner Michael Yaki, (February 2020): 17–18.

<sup>92</sup> Cheng Cheng, Mark Hoekstra, “Does Strengthening Self-Defense Law Deter Crime Or Escalate Violence? Evidence From Castle Doctrine,” National Bureau of Economic Research, Working Paper 18134, 4, <http://www.nber.org/papers/w18134>.

<sup>93</sup> Chandler McClellan and Erdal Tekin, “Stand Your Ground Laws, Homicides, and Injuries,” *Journal of Human Resources* 52, no. 3 (2017): 621–653.

<sup>94</sup> *Id.*; Cheng Cheng and Mark Hoekstra, “Does Strengthening Self-defense Law Deter Crime or Escalate Violence? Evidence from Expansions to Castle Doctrine,” *Journal of Human Resources* 48, no. 3 (2013): 821–854.

<sup>95</sup> Cheng Cheng and Mark Hoekstra, “Does Strengthening Self-defense Law Deter Crime or Escalate Violence? Evidence from Expansions to Castle Doctrine,” *Journal of Human Resources* 48, no. 3 (2013): 821–854.

<sup>96</sup> Rand Corporation, “The Science of Gun Policy: A Critical Synthesis of Research Evidence on the Effects of Gun Policies in the United States, Second Edition” (2020), [https://www.rand.org/pubs/research\\_reports/RR2088-1.html](https://www.rand.org/pubs/research_reports/RR2088-1.html).

<sup>97</sup> See US Commission on Civil Rights, “Examining the Race Effects of Stand Your Ground Laws and Related Issues,” Statement of Commissioner Michael Yaki, February 2020, 6.

<sup>98</sup> Ta-Nehisi Coates, “Stand Your Ground and Vigilante Justice,” *The Atlantic*, March 22, 2012, <https://www.theatlantic.com/national/archive/2012/03/stand-your-ground-and-vigilante-justice/254900/>.

<sup>99</sup> Ta-Nehisi Coates, “Florida’s Ubiquitous Castle,” *The Atlantic*, March 15, 2012, <https://www.theatlantic.com/national/archive/2012/03/floridas-ubiquitous-castle/254544/>.

<sup>100</sup> *Id.*

# State by State Citations

**Though not all states have Stand Your Ground laws, every state accounts for situations in which a homicide is considered legally justified, either with a statute or by judicial decisions. In some states, the justifiable homicide statute and the Stand Your Ground statute are the same.**

## Alabama

SYG statute: Ala. Code § 13A-3-23(b).

Justifiable homicide statute: Ala. Code § 13A-3-23(a).

## Alaska

SYG statutes: Alaska Stat. §§ 11.81.335(b)(5); 11.81.350(f).

Justifiable homicide statute: Alaska Stat. § 11.81.335(a).

## Arizona

SYG statutes: Ariz. Rev. Stat. §§ 13-405(B); 13-411(B); 13-418(B).

Justifiable homicide statutes: Ariz. Rev. Stat. §§ 13-405(B); 13-408; 13-411(B); 13-418(B).

Deadly force in response to property crime: Arizona's statute states that the use of force may be justified to prevent first or second degree burglary, which includes burglary of unoccupied residences. Ariz. Rev. Stat. §§ 13-411; 13-1507-08; 13-1501.

## Arkansas

Duty to retreat statute: Ark. Code Ann. § 5-2-607(b)(1)(A).

Justifiable homicide statute: Ark. Code Ann. § 5-2-607(a).

## California

SYG by court precedent: *People v. Clark*, 201 Cal.App.4th 235, 250 (2011) (citing *People v. Collins*, 189 Cal. App. 2d 575, 588 (1961)). *See also*, California Criminal Jury Instructions, Cal. Crim. No. 505, 506, 3470.

Justifiable homicide statute: Cal. Penal Code §§ 195-99.

Deadly force against a fleeing person: The plain text of California Penal Code § 197(4) states that deadly force is justifiable “When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed[.]” and courts have stated that “an assailed person . . . is entitled to . . . pursue the assailant until the danger of bodily injury or death has passed, even if safety could have been achieved by retreating.” *People v. Blessett*, 22 Cal.App.5th 903, 951, fn. 23 (2018) (partially overruled on other grounds); *see also*, *People v. Hughes* 107 Cal.App.2d 487, 494 (1951); CALCRIM No. 505. However, California courts have clarified that this law “should be read in light of common law principles” and provide that homicide is only justifiable when the felony involves imminent danger of death or great bodily harm, and a person reasonably believes that the immediate use of deadly force was necessary to defend against that danger. *See, e.g.*, *People v. Ceballos*, 12 Cal.3d 470, 478 (1974); *People v. Piorkowski*, 41 Cal.App.3d 324, 329-30 (1974); CALCRIM No. 505. Deadly force against property crime: The plain text of California Penal Code § 197(1) states that deadly force is justifiable when resisting any attempt to commit a felony (a category which includes theft of items valued over \$950). However, California courts have clarified that force is only justified in resisting violent felonies. *See above* for additional information.

## Colorado

SYG by court precedent: *Idrogo v. People*, 818 P.2d 752 (Colo. 1991).

Justifiable homicide statute: Colo. Rev. Stat. § 18-1-704.

## Connecticut

Duty to retreat statute: Conn. Gen. Stat. § 53a-19(b).

Justifiable homicide statute: Conn. Gen. Stat. § 53a-19.

## Delaware

Duty to retreat statute: Del. Code Ann. tit. 11, § 464(e)(2).

Justifiable homicide statute: Del. Code Ann. tit. 11, § 464.

## Florida

SYG statutes: Fla. Stat. §§ 776.012(b); 776.031(b); 776.032(2).

Justifiable homicide statute: *See generally* Ch. 776, Fla. Stat. (Justifiable Use of Force).

SYG arrest restriction: Fla. Stat. § 776.032(2).

Deadly force against property crime: Under Florida law, a person is justified in using deadly force “if he or she reasonably believes that such conduct is necessary to prevent the imminent commission of a forcible felony,” which is defined to include, among other things, burglary of an unoccupied motor vehicle (or other “conveyance”). Fla. Stat. Ann. §§ 776/031(2); 810.02(4).

# State by State Citations

## Georgia

SYG statute: Ga. Code Ann. § 16-3-23.1.

Justifiable homicide statute: Ga. Code Ann. § 16-3-21.

## Hawaii

Duty to retreat statute: Haw. Rev. Stat. Ann. § 703-304(5)(b).

Justifiable homicide statute: Haw. Rev. Stat. Ann. § 703-300; 703-304; 703-305.

## Idaho

SYG statute: Idaho Code § 19-202A(3).

Justifiable homicide statute: Idaho Code § 18-4009.

## Illinois

SYG by court precedent: *See e.g., Hammond v. People*, 199 Ill. 173, 182 (1902); *People v. McGraw*, 13 Ill. 2d 249, 256 (1958).

Justifiable homicide statutes: 720 ILCS 5/7-1; 720 ILCS 5/7-3; 720 ILCS 5/7-4.

Deadly force against property crime: State law states that use of deadly force is justifiable if a person reasonably believes that such force is necessary to prevent the commission of a forcible felony, which is defined to include burglary by unlawfully breaking into an unoccupied vehicle with the intent to commit a felony or theft. 720 ILCS 5/7-3(a); 720 ILCS 5/19-1; 720 ILCS 5/2-8.

## Indiana

SYG statute: Ind. Code Ann. § 35-41-3-2.

Justifiable homicide statute: Ind. Code Ann. § 35-41-3-2.

## Iowa

SYG statute: Iowa Code § 704.1(3).

Justifiable homicide statutes: Iowa Code §§ 704.1; §704.2A; 704.3 - 704.7.

## Kansas

SYG statutes: Kan. Stat. Ann. §§ 21-5222(c); 21-5230.

Justifiable homicide statutes: Kan. Stat. Ann. §§ 21-5222 - 21-5231.

SYG arrest restriction: Kan. Stat. Ann. § 21-5231.

## Kentucky

SYG statutes: Ky. Rev. Stat. Ann. §§ 503.050(4); 503.055(3), 503.070(3); 503.080(3).

Justifiable homicide statutes: Ky. Rev. Stat. Ann. §§ 503.050 - 503.085.

SYG arrest restriction: Ky. Rev. Stat. Ann. § 503.085(2).

## Louisiana

SYG statutes: La. Rev. Stat. Ann. §§ 14:19(C), (D); 14:20(C), (D).

Justifiable homicide statutes: La. Rev. Stat. Ann. §§ 14:19 - 14:22.

## Maine

Duty to retreat statute: Me. Stat., 17-A § 108(2)(C)(3)(a).

Justifiable homicide statute: Me. Stat., 17-A § 108(2).

## Maryland

Duty to retreat by court precedent: *See e.g., Burch v. State*, 346 Md. 253, 283-84 (1997).

Justifiable homicide by court precedent: *See e.g., State v. Faulkner*, 301 Md. 482, 485-86 (1984); *Porter v. State*, 55 Md. 220, 235-36 (2017).

## Massachusetts

Duty to retreat by court precedent: *See e.g., Commonwealth v. Lapointe*, 402 Mass. 321, 329 (1988); *Commonwealth v. Pring-Wilson*, 448 Mass. 718 (2007).

Justifiable homicide by court precedent: *See, e.g., Commonwealth v. Harrington*, 379 Mass. 446, 450 (1980); *Commonwealth v. Ortega*, 480 Mass. 603, 610-11 (2018).

## Michigan

SYG statute: Mich. Comp. Laws Serv. § 780.972.

Justifiable homicide statute: Mich. Comp. Laws Serv. § 780.972 - 780.974.

## Minnesota

Duty to retreat by court precedent: *See e.g., State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017).

Justifiable homicide statute: Minn. Stat. §§ 609.06; 609.065.



# State by State Citations

## Mississippi

SYG statute: Miss. Code Ann. § 97-3-15(4).

Justifiable homicide statute: Miss. Code Ann. § 97-3-15.

Deadly force against property crime: Mississippi law states that “the killing of a human being” is justifiable “in resisting” another person from committing a felony in the immediate premises of a dwelling, vehicle, or place of business or employment occupied by the person using such lethal force. Theft of property valued at or over \$1,000 is a felony. *See e.g.*, Miss. Code Ann. §§ 97-3-15(e), 97-17-41; *Olier v. Bailey*, 164 So.3d 982, 994 (Miss. 2015); *Westbrook v. State*, 29 So.3d 828, 833 (Miss. App. 2009).

## Missouri

SYG statute: Mo. Rev. Stat. § 563.031(3).

Justifiable homicide statute: Mo. Rev. Stat. § 563.031.

## Montana

SYG statute: Mont. Code Ann. § 45-3-110.

Justifiable homicide statutes: Mont. Code Ann. §§ 45-3-101 - 105; 45-3-110.

## Nebraska

Duty to retreat statutes: Neb. Rev. Stat. Ann. § 28-1409(4)(b); 28-1410(2).

Justifiable homicide statutes: Neb. Rev. Stat. Ann. § 28-1409 - 28-1411.

## Nevada

SYG statute: Nev. Rev. Stat. Ann. § 200.120(2).

Justifiable homicide statutes: Nev. Rev. Stat. Ann. § 200.120(1) - 220.200.

Deadly force against property crime: The plain language of Nevada law authorizes a person to use deadly force to resist an attempt to commit any felony in the person’s presence. Nev. Rev. Stat. Ann. § 200.160(2). Theft of items valued above \$1,200 is a felony. Nev. Rev. Stat. Ann. § 205.0835(2)(b). However, Nevada courts have found that this literal interpretation would be “unreasonable and absurd,” and ruled instead that “the amount of force used must be reasonable and necessary under the circumstances,” and that deadly force cannot be used unless the person killed poses a threat of serious bodily injury. *Newell v. State*, 131 Nev. 974, 980 (2015).

## New Hampshire

SYG statute: N.H. Rev. Stat. Ann. § 627:4(III)(a). *See also*, *State v. Etienne*, 163 N.H. 57 (2011).

Justifiable homicide statutes: N.H. Rev. Stat. Ann. § 627:4 - 627:8.

## New Jersey

Duty to retreat statute: N.J. Stat. § 2C:3-4(b)(2).

Justifiable homicide statute: N.J. Stat. § 2C:3-4.

## New Mexico

SYG by court precedent: *State v. Horton*, 57 N.M. 257, 261 (1953) (“Certainly the italicized sentence is erroneous in telling the jury the defendant could not kill his assailant if he could yield without being killed”); *State v. Anderson*, 364 P.3d 306, 310 (2015) (“The jury was not, however, informed as required by UJI 14-5190 that a person ‘who is threatened with an attack need not retreat’”); 14-5190 NMRA.

Justifiable homicide statutes: N.M. Stat. Ann. § 30-2-6 - 30-2-7.

## New York

Duty to retreat statute: N.Y. Penal Law § 35.15.

Justifiable homicide statute: N.Y. Penal Law § 35.15; 35.20(3); 35.30; 35.10(3).

## North Carolina

SYG statutes: N.C. Gen. Stat. §§ 14-51.3; 14-51.2(f).

Justifiable homicide statutes: N.C. Gen. Stat. § 14-51.2 - 14-51.4.

Deadly force against property crime: Under N.C. Gen. Stat. § 14-51.2, a person is presumed to have held a reasonable fear of imminent death or serious bodily injury if they are “the lawful occupant of a home, motor vehicle, or workplace” and both of the following are true: “(1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a home, motor vehicle, or workplace, or if that person had removed or was attempting to remove another against that person’s will from the home, motor vehicle, or workplace;” and “(2) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.”

It is not clear, however, whether the term “lawful occupant” refers only to someone who was physically present in the home, motor vehicle, or workplace when the unlawful entry occurred into that property, or if, instead, this section authorizes a person who is in their home to use lethal force to prevent someone from unlawfully entering their motor vehicle parked in the driveway.

# State by State Citations

## North Dakota

SYG statute: N.D. Cent. Code § 12.1-05-07(2)(b)(2).

Justifiable homicide statutes: N.D. Cent. Code § 12.1-05-01, 12.1-05-07 - 12.1-05-07.2.

## Ohio

SYG statutes: Ohio Rev. Code Ann. § 2307.601 (civil liability); §2901.05(B) (criminal).

Justifiable homicide statute: Ohio Rev. Code Ann. § 2307.601.

## Oklahoma

SYG statute: Okla. Stat. Ann. tit. 21, § 1289.25(D).

Justifiable homicide statutes: Okla. Stat. Ann. tit. 21, § 732 - 733.

SYG arrest restriction: Okla. Stat. Ann. tit. 21, § 1289.25(G).

## Oregon

SYG by court precedent: *See e.g., State v. Sandoval*, 342 Ore. 506, 513-514 (2007); *State v. Lang*, 215 Ore. App. 15, 18 (2007).

Justifiable homicide statutes: Or. Rev. Stat. Ann. §§ 161.219; 161.239.

Deadly force against property crime: Oregon law states that deadly force may be justifiable to prevent a burglary in a dwelling, even if the dwelling is not occupied. Or. Rev. Stat. Ann. §§ 161.219; 164.215.

## Pennsylvania

SYG statutes: 18 Pa. Cons. Stat. Ann. §§ 505 (2.3), (2)(ii); 506(b); 507(c)(3).

Justifiable homicide statutes: 18 Pa. Cons. Stat. Ann. § 501 - 510.

## Rhode Island

Duty to retreat by court precedent: *See e.g., State v. Guerrero*, 206 A.3d 108 (R.I. 2019); *State v. Garrett*, 91 A.3d 793 (R.I. 2014).

Justifiable homicide statutes: R.I. Gen. Laws §§ 11-23-1; 11-8-8.

## South Carolina

SYG statute: S.C. Code Ann. § 16-11-440(C).

Justifiable homicide statute: S.C. Code Ann. §§ 16-11-410 - 16-11-450; 17-13-10; 16-1-60.

Deadly force against a fleeing person: S.C. Code Ann. § 17-13-10; *See also, State v. Cooney*, 320 S.C. 107 (1995).

SYG arrest restriction: S.C. Code Ann. § 16-11-450 (B).

## South Dakota

SYG statutes: S.D. Codified Laws §§ 22-18-4; 22-16-34; 22-16-35.

Justifiable homicide statutes: S.D. Codified Laws §§ 22-16-34 - 22-16-35; 22-18-4.

Deadly force against property crime: The plain language of South Dakota law states that a person may use deadly force to resist any attempt to commit “any felony upon him or her,” or “in the lawful defense” of that person or certain other people, “if there is reasonable ground to apprehend a design to commit a felony . . . and imminent danger of such design being accomplished.” S.D. Codified Laws §§ 22-16-34; 22-16-35. However, South Dakota courts have found that this literal interpretation would lead to absurd results, and have interpreted South Dakota’s justifiable homicide statutes “to impliedly include the word ‘necessary.’” Instead, the Court ruled that “it was never the intent of our forebears when this statute was enacted to encompass felonies not involving a danger of serious bodily harm.” If they concluded otherwise, the Court wrote, “one might justifiably be shot while forging a check in someone’s home.” *State v. Birdshead*, 871 N.W.2d 62, 73 (2015); *State v. Pellegrino*, 577 N.W.2d 590, 596 (1998).

## Tennessee

SYG statute: Tenn. Code Ann. § 39-11-611(b)(2).

Justifiable homicide statute: Tenn. Code Ann. §§ 39-11-611(b)(2); 39-17-1322.

SYG arrest restriction: Tenn. Code Ann. § 39-17-1322.

## Texas

SYG statute: Tex. Penal Code §§ 9.31(e); 9.32 (c).

Justifiable homicide statute: Tex. Penal Code §§ 9.31-9.34.

Deadly force against a fleeing person: Tex. Penal Code § 9.42.

Deadly force against property crime: Tex. Penal Code §§ 9.42-9.423. *See also, e.g., Boget v. State*, 74 S.W.3d 23, 3 (Tex.Crim.App. 2002); *McFadden v. State*, 541 S.W.3d 277, 289 (Tex.Ct.App. 2018).



# State by State Citations

## Utah

SYG statute: Utah Code Ann. § 76-2-402.

Justifiable homicide statute: Utah Code Ann. § 76-2-402.

Deadly force against property crime: The plain text of Utah law states that deadly force is justifiable where a person reasonably believes that force is necessary to prevent the commission of a forcible felony, which is defined to include burglary of a building, whether or not the building is occupied. Utah Code Ann. §§ 76-6-402; 76-6-202. A 2018 Utah Supreme Court decision noted that the applicable definition of “forcible felony” was intended to include crimes “that carry a high risk of a victim suffering death or serious bodily injury,” and so courts may decline to interpret this statute literally or find that lethal force is justified to prevent commission of burglaries that do not carry such a risk. *See State v. Tulley*, 428 P.3d 1005, 1015, fn. 9 (2018).

## Vermont

SYG by court precedent: *See State v. Hatcher*, 167 Vt. 338, 348 (1997).

Justifiable homicide statute: 13 V.S.A. § 2305.

## Virginia

SYG by court precedent: *See, e.g., Foote v. Commonwealth*, 11 Va. App. 61, 67 (1990) (citing *McCoy v. Commonwealth*, 125 Va. 771, 775 (1919)).

Justifiable homicide by court precedent: *See e.g., Bailey v. Commonwealth*, 200 Va. 92 (1958).

## Washington

SYG by court precedent: *See e.g., State v. Redmond*, 150 Wn.2d 489; *State v. Studd*, 137 Wn.2d 533, 549, 973 P.2d 1049 (1999); *State v. Williams*, 81 Wn. App. 738, 744, 916 P.2d 445 (1996).

Justifiable homicide statute: Rev. Code Wash. § 9A.16.050.

## Washington DC

Duty to retreat by court precedent: There is no affirmative duty to retreat in DC but juries may expressly consider a failure to retreat when evaluating the necessity of a person’s use of force. *See e.g., Gillis v. United States*, 400 A.2d 311 (D.C. 1979); *Broadie v. United States*, 925 A.2d 605 (D.C. 2007); *Dawkins v. United States*, 189 A.3d 223 (D.C. 2018).

Justifiable homicide by court precedent: *See e.g., Comber v. United States*, 584 A.2d 26 (D.C. 1990), *Thomas v. United States*, 557 A.2d 1296 (D.C. 1989), *United States v. Bradford*, 344 A.2d 208 (D.C. 1975).

## West Virginia

SYG statute: W. Va. Code § 55-7-22(c).

Justifiable homicide statute: W. Va. Code § 61-2-1. *See also, Williams v. Mohn*, 462 F. Supp. 756 (N.D.W. Va. 1978); *State v. Harden*, 223 W. Va. 796 (2009).

## Wisconsin

SYG statute (Occupied vehicles only): Wis. Stat. Ann. § 939.48. *See also, State v. Wenger*, 225 Wis. 2d 495 (Wis. Ct. App. 1999).

Justifiable homicide statute: Wis. Stat. §§ 939.48; 939.22.

## Wyoming

SYG statute: Wyo. Stat. Ann. § 6-2-602(e).

Justifiable homicide statute: Wyo. Stat. Ann. § 6-2-602.

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