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Southern Honor: An Analysis of Stand Your Ground Law in Southern Jurisdictions

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SOUTHERN HONOR: AN ANALYSIS OF STAND YOUR
GROUND LAWS IN SOUTHERN JURISDICTIONS

by

VAUGHN G.S. GLINTON, JR.

A thesis submitted in partial fulfillment of the requirements
for the Honors in the Major Program in Legal Studies
in the College of Health and Public Affairs
and in the Burnett Honors College
at the University of Central Florida
Orlando, Florida

Fall Term 2013

Thesis Chair: Dr. James A. Beckman

ABSTRACT

In 2005, Florida became the first state to pass the heavily National Rifle Association , NRA, supported “Stand Your Ground” law. The most notable components of the law were abolishing the duty to retreat for someone who is not engaged in lawful activity and is in a place where he has the right to be, granting civil and criminal immunity to those using lawful force, and presuming that a person who is attacked in his dwelling, residence, and occupied vehicle has a reasonable fear of death or great bodily harm. The law was subject to a substantial amount of criticism because it was a significant departure from Florida’s more than a century old common law principles regarding self-defense. Possibly due to Florida not having any precedents for these cases, Florida courts would have conflicting decisions in these matters and law enforcement agencies would enforce the law differently in similar incidents. Regardless of the issues faced by Florida, over twenty states would adopt their own versions. A significant number of these states are in the Southeastern region of the United States and are neighbors to Florida or border Florida’s neighbors, such as Mississippi, Alabama, Georgia, North Carolina, South Carolina, Tennessee, and Louisiana. Because of this interesting pattern, the study examines the idea of southern culture playing a role in the passage of “Stand Your Ground” via the “Culture of Honor” theory and the researcher decided to use these jurisdictions and Florida as this study’s sample. The researcher also wanted to include these jurisdictions because the existing “Stand Your Ground” literature mainly focuses on Florida and the researcher wanted to add something new to the discussion.

The intent of this study to examine Florida’s influence on the other jurisdictions, note any commonalties between the statutes of the jurisdictions, compare justifiable homicide statistics for

the jurisdictions that provided such data, predict the future of these laws, and explore the “Culture of Honor” Theory as a possible explanation for “Stand Your Ground” laws in the states discussed. The study accomplished these goals by examining how each jurisdiction handled self-defense before “Stand Your Ground,” looking at the motives behind the jurisdictions adopting “Stand Your Ground,” comparing justifiable homicides in the four jurisdictions that provided them in the years immediate preceding the passage of “Stand Your Ground” to the subsequent years, and looking at amendments and proposals that were presented after the passage of “Stand Your Ground.” The results uncovered that all the jurisdictions, except for Georgia and Tennessee, show a very strong Florida influence based on their similarities to Florida’s law and legislators in the jurisdictions clearly mentioning Florida as their inspiration for proposing their own versions. In the jurisdictions that provided justifiable homicides, all showed an increase in the number of justifiable homicides after the passage of “Stand Your Ground.” The jurisdictions in this study have also shown a strong resistance to any amendments or the complete repeal of this law. Therefore, any drastic amendment or the complete repeal seems unlikely in the future. The “Culture of Honor” Theory does explain why a few of the jurisdictions in the study adopted “Stand Your Ground” but Florida and the NRA’s influence explain why others chose this course of action.

DEDICATION

For Trayvon Martin and his family.

ACKNOWLEDGEMENTS

I want to thank everyone who helped me during this process, and especially Dr. Beckman. Thank you for always finding the time to meet with me or respond to my e-mails even when you were extremely busy. There were times that I felt that I was in over my head and had second thoughts about this project, but after I met with you, I would become so energized and enthusiastic about my project. It was actually in your Criminal Law that I first became aware of Trayvon Martin and “Stand Your Ground.” At that time, I was interested in pursuing Honors in the Major but could not come up with a topic. When you brought the incident to my attention, I knew this would be my topic. I also want to thank my other committee members, Dr. Schmidt and Dr. Oetjen for agreeing to be on my committee when they had a million other things they could have been doing. I appreciate Dr. Schmidt for allowing me to attend her Blue Ribbon Panel meetings and Dr. Oetjen for taking time away from his department to aid me in the completion of this thesis. I owe a large thank you to the various state agencies and libraries that helped me locate the necessary information to complete this thesis. I also want to thank fellow UCF students, Elise Barimo and Cesar Neira, for always offering advice whenever I asked. I have to thank my family for always pushing me to do my best in everything I do and always believing in me, even when I struggle believing in myself. I have to thank God for making this all possible.

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INTRODUCTION

In order to understand the self-defense laws of today and note how they have evolved over time, it is necessary to examine their English common law roots. By the thirteenth century England had established guidelines for how self-defense would operate (Levin 528). A homicide was only justified under three circumstances: “when it occurred in the lawful prosecution of the King's writ, in the attempt to apprehend a fleeing felon, or in the attempt to protect oneself from robbery” (Mischke 1002). A killing of a person that did not meet any of these criteria was considered to be homicide, even if it was in self-defense (Mischke 1003). All hope was not lost for someone who acted in self-defense. If the accused was able to show that he “retreated to the wall” before killing the deceased and the necessity of the killing in court, the jury could enter a special verdict of guilty. This verdict was important because it allowed an application for the King to intervene and possibly pardon the defendant from any punishment (Brown 3). This pardon gave the King the final say in self-defense cases and created a monopoly for the state (Levin 528). This monopoly communicated to the citizens that the right to defend one's self against an attack was not an automatic license to kill.

The elements of necessity and retreat were the cornerstones of self-defense and were related. To prove necessity, defendants would have to establish that it was necessary for them to kill to avoid their own deaths or severe injury (Brown 4). This principle of necessity was a catalyst for the development of the duty to retreat. The duty to retreat required that when attacked the defendant had to first make an attempt to leave the scene or retreat as far away from the aggressor as possible; until his back was to the wall if necessary. The defendant was prohibited from standing his ground and initially attacking the aggressor. Only when all modes

of retreat were eliminated could the defendant physically attack his assailant and kill if necessary (Brown 4). The rationale was that if a person could retreat safely from an attack, then killing the attacker was not necessary. Thus, the necessity element was not satisfied.

There was one place where the duty to retreat was inapplicable: the home. The English believed that a man's home was his castle and he should not have to retreat when faced with an attack that took place in it (Levin 530). This rationale would become known as the defense of habitation and today is called the castle doctrine. It is important to note that the defense of habitation and self-defense were treated as separate issues in England (Catafalmo 506). While self-defense pertained to protection from a physical attack, the defense of habitation related to defending the home against intrusion (Catafalmo 507). The home occupied a special status in English society. Legal scholar Sir William Blackstone offered his insight, "the home was valued highly enough in the cultural consciousness not only to be likened to a castle, a place where safety from enemies should be guaranteed, but also to confer a certain degree of immunity from the state" (Levin 530). In his "castle," a man was entitled to use physical force, including deadly force, as a first option and not a last resort to protect his home. It was not taken into consideration if the intruder only committed a misdemeanor or that none of the home's residents were harmed (Catafalmo 507). While the King had a monopoly in the public sphere, it was the man who had the monopoly in his home (Levin 531).

When the European colonists came to America, they brought more than their just families, clothes, and cultures, they also brought the principles established in English common law. While the majority of states had no issue with the defense of habitation, there was division about the duty to retreat. In the 1800s, many courts in the South and West refused to impose this

duty against defendants (Catafaldo 507). In the South, they felt that it was cowardly to retreat from an attack and violated their code of honor (Mischke 1006). Using self-defense as justification or excuse for homicide was accepted by the majority of the South, resulting in acquittals for homicides that would likely have been considered cold-blooded murder in the North (Catafaldo 506). The duty to retreat had retreated into the minority (Brown 5).

This division among the states would eventually cause the United States Supreme Court to weigh in, but unfortunately it failed to provide any meaningful clarity on the issue (Mischke 1007). In *Beard v. The United States*, 158 U.S. 550 (1895), the Supreme Court reversed a circuit court's manslaughter conviction. In this case, Beard and the deceased were involved in an ongoing feud over a cow. Beard saw the deceased arguing with his wife. The deceased angrily approached him and reached into his pocket. Beard struck him in the head and killed him before he would retrieve what later was revealed to be a weapon. In its opinion the Court said: "The defendant was where he had the right to be, when the deceased advanced upon him in a threatening manner, and with a deadly weapon; . . . he was not obliged to retreat, nor to consider whether he could safely retreat, but was entitled to stand his ground and meet any attack made upon him with a deadly weapon" (158 U.S. at 564). This decision seemed to indicate that Supreme Court had indeed sided with those jurisdictions who would not enforce a duty to retreat. However, one year later, in *Allen v. United States*, 164 U.S. 429 (1896), the Court appeared somewhat inexplicably (in light of *Beard*), to be on the side of jurisdictions that enforced the duty to retreat by saying,

If [a person] is attacked by another in such a way as to denote a purpose to take away his life, or to do him some great bodily harm from which death or

permanent injury may follow, in such a case he may lawfully kill the assailant.

When? Provided he use all the means in his power otherwise to save his own life or prevent the intended harm, such as retreating as far as he can, or disabling him without killing him, if it be in his power. (164 U.S. at 497)

The Court went on to say, "It must be an act where he cannot avoid the consequences. If he can, he must avoid them, if he can reasonably do so with due regard to his own safety" (164 U.S. at 498).

The next time the Court would weigh in was *Brown v. United States*, 256 U.S. 335 (1921). Whether then decisively ruling if there was a duty to retreat or not, the Court stated, "Rationally the failure to retreat is a circumstance to be considered with all the others in order to determine whether the defendant went farther than he was justified in doing; not a categorical proof of guilt" (256 U.S. at 343). In other words, the totality of the circumstances would have to be taken into consideration when deciding a claim of self-defense and a verdict would not only hinge if the defendant retreated or not.

The Court's collective jurisprudence from 1895-1921 indicate that the Court was not exactly sure on where it stood on the issue of the duty to retreat. It did not offer clear guidelines for the states to follow. The states were left to decide on how they would handle the issue for themselves. The states took various approaches. Parts of this thesis will illustrate the approaches that were taken by the jurisdictions in this study.

The debate on duty to retreat versus no duty to retreat lost its intensity for a period of time. Then in April 2005, Florida Governor Jeb Bush signed the heavily National Rifle Association (NRA) supported Senate Bill 436 into law (Wallace 37; Megale 114). With this

action, Florida became the first state to enact what would become known as the “Stand Your Ground” law . The law accomplished three very important things: first, it eliminated the duty to retreat for a defender that is in a place he has the legal right to be; second, it removed civil liability for those acting under the law; third, it established a presumption of reasonable fear for the individual claiming self-defense (Cheng and Hoekstra 1). The first accomplishment is what really changed the face of self-defense in Florida. Prior to the passage of this law, Florida operated under the English common law duty to retreat unless a person was in his home or “castle” (*Sykes v. State of Florida*, 68 Fla. 348 (1914)). While at common law only a person’s home could be his “castle”, the Florida law creates “innumerable” castles in any place a person has the legal right to be and is under no duty to retreat (Catafalmo 539). This could include a school, sidewalk, or a park.

Of course this major shift from Florida’s legal norm caused some division. Critics of the law included “Dan Gelber, one of twenty representatives who voted against the bill, stated that ‘[i]t legalizes dueling. It legalizes fighting to the point of death, without anybody having a duty to retreat’ ” (Weaver 397). Another common critique by prosecutors is that the law “unnecessarily expanded the right to use deadly force in self-defense” (Weaver 397.) On the other hand, proponents such as “Congressman Dennis Baxley stated that the law made sense because requiring a duty to retreat was ‘a good way to get shot in the back,’ and the new law would deter criminals . . . ” (Zbrzenj 257). Former NRA President Marion Hammer asserted that these laws are necessary because more often than not the victim was being prosecuted (Weaver 397). Despite the division, the law did not stop at the borders of the Sunshine State. After Florida’s passage of the law, the law has been put in effect in over twenty states, with

many of those states being in the South (Cheng and Hoekstra 2). The death and subsequent trial of a Florida teen killed by a self-appointed neighbor watchmen, who claimed self-defense, captured the attention of many jurisdictions and forced them to reevaluate their “Stand Your Ground” laws.

METHOD

This paper will analyze the self-defense laws of eight Southeastern states: Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. The selected pool of states to be analyzed was composed for several reasons. First, Florida should be included because it is the inaugural “Stand Your Ground” state that many other states have emulated. A “Stand Your Ground” state is a state that statutorily allows its citizens to respond to an attack with physical force, including deadly force, in any place where he or she has the legal right to be without first retreating and offers civil and/or criminal immunity to citizens acting under the law. Florida is also important because its inclusion allows the author to examine how subsequent “Stand Your Ground” states have stayed uniform to Florida’s statute or strayed away.

When determining what other states were to include in this study, it became quickly apparent to the author that all the states that bordered Florida were “Stand Your Ground” states, such as, Mississippi, Alabama, and Georgia. Then looking at the states that bordered those states, North Carolina, South Carolina, Tennessee, Louisiana, and Arkansas, one would notice that all of these states were “Stand Your Ground” states also, with the exception of Arkansas, which is not included in this sample. It may surprise many to realize that basically the whole southern region has adopted the “Stand Your Ground” law.

Each of the states in this study will have their own chapter. Each state’s chapter will discuss the self-defense laws of that state prior to the passage of “Stand Your Ground”, how the states arrived at “Stand Your Ground,” compare the statute to Florida’s, and look at the aftermath of “Stand Your Ground” in that state. In Florida’s chapter, instead of a comparison section, the

thesis will focus on critiques of Florida's "Stand Your Ground" law. This is important because if a state's statute is strikingly similar to Florida's, then those critiques can also apply to it. An observation of the Florida statute was that after its passage, the number of justifiable homicides had a dramatic increase in subsequent years. Successful claims of self-defense under "Stand Your Ground" are classified as justifiable homicides. In the aftermath sections, there will be a table showing the number of justifiable homicides in the state prior to and after "Stand Your Ground." The researcher was only able to obtain this information for Florida, Georgia, Tennessee, and South Carolina because the other states do not keep statistics on their number of justifiable homicides. That aftermath section will also look at key cases and proposed legislation since the passage of "Stand Your Ground." Also, for clarification purposes, the relevant portions of the statutes section will focus on sections added or amended after Florida's passage of "Stand Your Ground."

As previously mentioned, "Stand Your Ground" has had major popularity in the Southern jurisdictions of America. After examining the states, the author will explore the South's "culture of honor" as possible explanation for this occurrence. The conclusion of this thesis will address Florida's influence in other states adopting "Stand Your Ground", commonalities of the law among the states, the South's culture of honor role in the adoption of "Stand Your Ground" laws, and the future of the law.

LITERATURE REVIEW

To complete the required research, the author consulted relevant cases, statutes, law review articles, jury instructions, and books for each jurisdiction in this study. A supplemental resource was the newspapers from these jurisdictions. They provided key information as to what was going on in these jurisdictions that aided the passage of “Stand Your Ground” and incidents that did not make it to court; information that was not included in a case’s opinion or in a statute. The researcher also contacted state agencies, such as the Florida Department of Enforcement and its equivalent in other states, for the number of justifiable homicides in the state in years preceding and subsequent to the passage of “Stand Your Ground.” For the “Culture of Honor” section, relevant books were consulted.

In the process of completing this thesis, the researcher found numerous law review articles that were Florida centered and chose five to complete the Florida section. These articles were all written after the passage of “Stand Your Ground.” On the other hand, the researcher was only able to find three law review articles for all the other jurisdictions combined. One for Alabama, Louisiana, and Tennessee. Only the Alabama article was written after the passage of “Stand Your Ground.”

The dominant sources utilized in analyzing each state were the primary sources of law, namely states statutes and cases of each of the eight jurisdictions. As this thesis is intended to be an original analysis of the law between eight different jurisdictions, the author utilized secondary sources only to provide context or to clear up ambiguities in the state law when one looked at state statutes or cases alone.

CHAPTER 1: FLORIDA

Prior To “Stand Your Ground”

Prior to Florida’s passage of “Stand Your Ground” in 2005, Florida found itself among the minority of states that imposed a duty to retreat (Zbrzenj 240). It is interesting to note that Florida’s statutes remained mute on this until the early 2000s. In fact, the duty to retreat first appeared in the Florida statutes in 2005 (ironically, the same year it was abolished) (Fla. Stat. 776.012). While the Florida statutes remained silent on this point, it was the judiciary who consistently remained vocal in favor of the duty to retreat.

The jury instructions approved by the Florida Supreme Court in *Sykes v. State of Florida*, 68 Fla. 348 (1914), established how self-defense would operate in Florida by saying:

A defendant reasonably free from fault is under no duty to retreat from an assailant, where he reasonably believes that to retreat would increase his peril, but in order to justify a killing under the claim of self defense, the slayer must be reasonably free from fault in bringing on the difficulty. He must not have been the intentional aggressor in bringing on the difficulty, and he must have resorted to all reasonable means (within his knowledge) and at his command, consistent with his own safety, to avoid the necessity of taking human life. If the defendant was the intentional aggressor, or if the defendant was not reasonably free from fault in bringing on the difficulty, or if there were any other reasonable means at the defendant's command (within his knowledge) consistent with his own safety, to which he could have resorted instead of killing the deceased, if he did kill him, then he could not justify his act on the ground of self-defense. (68 Fla. at 349)

This jury instruction shows just how difficult it was for someone to free himself from the duty to retreat. The defendant could not be the aggressor in the situation, had to reasonably believe that retreat would not put him in more danger, and used reasonable modes to avoid the situation. The reasoning behind placing such a large burden on the defendant was to save lives. The Florida judiciary felt that by retreating from an altercation both the attacked and his attacker's lives would be spared, instead of them fighting it out and putting both their lives at risk (Zbrzenj 241). This theme of fighting back as a last resort can be seen in other cases. In the *Thompson v. State of Florida*, 552 So. 2d 264 (1989), the Second District Court of Appeals stated, "There is a duty to retreat in the face of a felonious attack before using deadly force on the attacker but deadly force is justifiable if retreat would be futile" (So. 2d 264 at 266). In the earlier case of *Danford v. The State of Florida*, 43 So. 593 (1907), the Florida Supreme Court gave a similar opinion by stating, "It cannot be denied that it is the duty of a party to avoid a difficulty which he has reason to believe is imminent, if he may do so without apparently exposing himself to death or great bodily harm" (43 So. at 596). The reader may wonder when does the duty to retreat end. The Fifth District Court of Appeal shed some light on this issue in *Brown v. State of Florida*, 454 So.2d 596 (1984). In this case, the court reversed Brown's murder conviction. The court based its reversal on Brown's attempted retreat and lack of an avenue of escape. This is illustrated in the court's opinion below:

Defendant did what he could to extricate himself from the situation and armed himself for protection. He attempted to retreat from the battle, but Williams pursued him. As defendant retreated he continued to ask Williams to stay away, to break it off, to leave him alone, but Williams continued to stalk him, fists balled

and ready to inflict damage. Defendant fired a shot into the ground, still retreating and still asking Williams to stay away, but Williams came on relentlessly. The evidence is clear that defendant fired the second and fatal shot because there was no alternative, because Williams had closed in on him and had defendant turned to run, Williams would have been on him. (454 So.2d at 600-601)

The “no alternative” in the second to last line of the above quote illustrates how serious the Florida’s courts were in enforcing the “retreat to the wall” standard in Florida.

Florida recognized one place where the duty to retreat did not apply: the home. The Florida judiciary kept the castle doctrine alive and well in Florida. Much like the duty to retreat, it would not appear in the Florida statutes until 2005 (Fla. Stat. 776.013). However, that did not stop the courts from enforcing it in their decisions. In *Hedges v. State of Florida*, 172 So. 2d 824 (1965), the Florida Supreme Court stated, “. . . [W]hen one is violently assaulted in his own house or immediately surrounding premises, he is not obliged to retreat but may stand his ground and use such force as prudence and caution would dictate as necessary to avoid death or great bodily harm. When in his home he has "retreated to the wall" (172 So. 2d at 827). Subsequent cases would add more details to this principle. For example, in *Weiland v. State of Florida*, 732 So. 2d 1044 (1999) the Florida Supreme Court brought Florida in line with the major of states by establishing that even in a dispute with co-habitants there was no duty to retreat. Another case of interest to note is *Baker v. State of Florida*, 506 So. 2d 1056 (1987). The court refused apply the castle doctrine to the defendant’s car because of the “mobility” of a car (506 So. 2d at 1059). This case illustrates how restrictive the court was in its application of the castle doctrine.

Road to “Stand Your Ground”

In 2004, the National Rifle Association ,NRA, had put the passage of “Stand Your Ground” in Florida on its agenda. A common reason behind this decision is the concept of “Stand Your Ground” being a gun law (Zbrzenj 266). It is considered to be a gun law because it permits the use of “deadly force”. Florida Statute 776.06 defines “deadly force” as “force that is likely to cause death or great bodily harm” and the firing of a firearm is listed in the examples. “Stand Your Ground” was not the first gun law that Florida preceded the rest of states in passing. In 1987, Florida was the first state to pass the right-to-carry law which allowed Florida citizens to carry concealed firearms with a permit (Olorunnipa). Also, the law required police to license all eligible applicants for concealed carry permits. Before the law, law enforcement agencies could discriminate in who they gave a permit to. Under the law, law enforcement agencies must give a permit to anyone who meet these requirements: the applicant is at least 21, “[d]oes not suffer from a physical disability which interferes with safe handling of a firearm, has not been convicted of a felony ; has not been convicted of a drug charge in the preceding three years; has not been confined for alcohol problems in the preceding three years; has completed any of a number of firearms safety classes; and has not been committed to a mental hospital in the preceding five years” (Cramer and Kopel). In research completed by the NRA, forty states completely outlawed or had strict regulations before Florida’s passage of the law. However, by 2005, thirty-eight states had followed Florida’s lead (Begos, Stockfisch). This research indicates that the NRA was cognizant of Florida being a potential influence to other states in matters of gun policy and was likely betting on a repeat to happen with “Stand Your Ground.”

Another related reason is the publicity that the law's passage in Florida would receive. The NRA's plan was also to get "Stand Your Ground" passed in other jurisdictions as well. But, legislators in other jurisdictions could not pass a law that they had never heard of. When Florida was considering the "right to carry" law it received a substantial amount of national attention. The NRA was most likely hoping for the same thing to happen with "Stand Your Ground." Also, Florida was in the minority of states that operated under the duty to retreat. Having Florida throw away over a century of common law would be sure to capture some attention. However, if the NRA chose a state that already had no duty to retreat, it would not have been that much of a change as compared to Florida. Also, Florida's passage could add to the validity of the law. If Florida was willing to throw away its established tradition for something new, it would send the message to other states that this way is the proper direction for self-defense. In fact, Marion Hammer, former president of the NRA, credited the publicity garnered by Florida's passage as being instrumental in the NRA being able to get it passed in other jurisdictions (Leskancic).

"Stand Your Ground" easily made its way through the Florida legislature. In March 23, 2005, it passed the Senate in a dominating thirty-nine to zero vote ("Protection of Persons"). Two weeks later it passed the House of Representatives in a ninety-four to twenty vote ("Protection of Persons"). Former Governor Jeb Bush signed the bill on April 26, 2005 with Marion Hammer, at his side (Royse). The NRA had knocked down its first domino.

Criticisms of "Stand Your Ground"

Various law review articles focus on the dysfunctions of the Florida's "Stand Your Ground Law." Recurring themes are problems with eliminating the duty to retreat, problems in expanding the castle doctrine, the vagueness of the term "unlawful" activity in the statute, and

the provision providing immunity from criminal and civil prosecution for those who act in so-called self-defense. Florida Statute §776.013(3) effectively eliminated the duty to retreat by stating:

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

To fully comprehend the magnitude of this statute, it is necessary to reflect back on the common law duty to retreat. The rationale behind this principle was to defuse a situation or de-escalate a potentially dangerous encounter. The main goal was to preserve human life (Jenson and Nugent- Borakove 5). If a defender was successfully able to escape, then not only would his life have been saved but also the lives of any innocent bystanders that could have been caught in the altercation. Under this rationale, defendants knew they had to make an effort to retreat first before attacking. Attacking was the last resort and it could prove to be very costly if the defendant was not able to prove that it was his last resort at trial. However, Florida's current statute makes attacking a first choice. Under Florida's law, "anytime one claims to perceive a threat, that individual would be justified in reacting violently; they would have little incentive to diffuse the situation by retreating" (Feingold and Lorang 226) This statute promotes escalation of a conflict rather than duty to retreat's de-escalation. Moreover, the statute allows citizens to

“react automatically by encouraging people to take immediate action if they perceive a person to be threatening or suspicious” (Feingold and Lorang 227).

Expanding the castle doctrine has also faced much criticism. Florida Statute §776.013 is the relevant section to this issue and it states:

A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if:

(a) The person against whom the defensive force was used was in the process of unlawfully and forcibly entering , or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person’s will from the dwelling, residence, or occupied vehicle; and

(b) The person who uses defensive force knew or had reason to believe that an unlawful and forcible act was occurring or had occurred.

The key word in this statute is “presumed.” In this context, presumed means that citizens using force are automatically given the benefit of the doubt that they had a reasonable fear of serious bodily harm or death. On the surface, this provision seems ideal. Someone who used self-defense in the appropriate way should not deal with the added stress of being investigated. This statute has replaced the common law “reasonable person” standard with this “presumption of reasonableness” (Jenson and Nugent- Borakove 6). Under the reasonable person standard, a person would have to prove that their conduct was reasonable under the circumstances he faced. Law Professor Anthony Sebok illustrates why this change in standards can be problematic. He points out that this statute goes against the long held legal belief that life outweighs the value of

property. He demonstrates this point with the anecdote of a student breaking into a teacher's car to vandalize it. The teacher discovers the student and shoots him. Under "Stand Your Ground," the teacher is entitled to the "presumption of reasonableness" and is therefore justified in using deadly force and would not face criminal penalties. The presumed reasonable fear of death or great bodily harm of the defender and the malicious intent of an intruder allows "the victim of intrusion" too much latitude to use deadly force. These presumptions allow the use of deadly force, even if non-deadly or no force would have been reasonable (Weaver 404- 405). For example in the hypothetical student- teacher example, the teacher could have held the student at gunpoint until the police arrived. This situation violates the principle of life carrying more value than property because the student was basically killed over a car. If the police caught him and he was prosecuted, he might have received a minor penalty but nothing remotely close to death. At this juncture, it is important to note that previously the Florida courts refused to apply the castle doctrine to automobiles as mentioned earlier in *Baker*, but presently the automobile is elevated to the special status that the home once occupied alone, even though the automobile is a probable tool of retreat.

The presumption also allows a person within his "castle" to act without any fear of punishment, even if he or she has no reasonable fear, knows the intruder does not have any malicious intent, or knows that the use of deadly force is unreasonable. An example of this is a 2006 incident between neighbors in Clearwater, Florida. Kenneth Allen shot his neighbor Jason Rosenbloom twice while he was in Allen's doorway. Allen had reported Rosenbloom for putting out more garbage bags than the local ordinance permitted. Rosenbloom knocked on Allen's door to confront him and an argument ensued. Allen said that Rosenbloom had his foot in the

door and attempted to rush in his home before he pulled the trigger. Rosenbloom refuted this claim. While accounts vary on what exactly occurred, no one can disagree about Rosenbloom being shot twice , once in the stomach and another in the chest. After the incident Allen stated that he was afraid and that he had a right to keep his home safe. All Allen had to show was that Rosenbloom "unlawfully" and "forcibly" entered or attempted to enter his home and that he knew such entry was occurring when he shot Rosenbloom. If Allen proved this, then he is presumed to have the reasonable fear necessary to justify using deadly force. Even if the State could prove that Allen did not fear Rosenbloom , could see that he was plainly unarmed, and had no malicious intent, it is irrelevant because the presumption was in favor of Allen (Weaver 412, 413). Consequently, the state decided not to pursue charges and said the Allen's claim on self-defense was well-founded and he was not arrested (Brown).

The presumption has changed the game for prosecutors. "This presumption prevents prosecutors—and the jury—from considering the actual facts that show whether the force used was reasonable or unreasonable, essentially eliminating prosecutorial discretion in evaluating whether the use of deadly force was justified" (Janson and Nugent- Borakove 6). Once the presumption is in place, prosecutors have the difficult task to refute it. Russell Smith, former president of the Florida Association of Criminal Defense Lawyers, said that, "the real impact [of the law] has been that it's making filing decisions difficult for prosecutors. It's causing cases to not be filed at all or to be filed with reduced charges." Also, ex- Duval County State Attorney Shorstein referenced five cases where this has happened. These cases included an incident where a man was shot by a motorist following an argument where the man allegedly attacked the motorist, an incident where a man was shot and killed by an acquaintance in a domestic

dispute, and a road rage episode where a woman was stabbed to death by another woman (Weaver 405-406). “Stand Your Ground” has eroded self-defense from being a defense that is proven at trial to a plea bargaining tool and a hindrance to prosecution. In these cases, the defendants have the ball in their courts because the people that could counter their stories tend to be dead. Thinking about their own self-interest, defendants are unlikely to offer testimony that threatens their freedom (Wallace 40).

Prosecutors are not the only people affected by this presumption; officers are too. Florida Statute § 776.032 (2) offers officers vague guidelines by stating:

“A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (1), but the agency may not arrest for using force unless it determines that there is probable cause that the force that was used was unlawful.”

Probable cause is required for an arrest. Establishing probable cause is almost impossible because law enforcement must “presume” the use of force was lawful in compliance with section 776.013. Because law enforcement is only authorized to investigate unlawful acts, it is essentially precluded from investigating violent acts occurring within an occupied vehicle, dwelling, and residence. As a result, probable cause can never be established where an individual commits a violent act within these locations (Megale 118). Another issue is that this vague statute allows officers a great amount of discretion in incidents outside these locations. This law is essentially asking Florida’s over three hundred distinct law enforcement agencies to use their standard procedures for investigating without any clear guidelines (Wallace 39). This is almost like having a race with over three hundred participants, not designating a specific route, and just shouting “go”. Similar to what would happen in the race, the law enforcement agencies appear to

all be going in different directions. For example, in an examination of five months of court records for Lake, Orange, Osceola, Polk, Seminole, and Volusia counties "widespread differences in the way claims are investigated and prosecuted" was discovered. In Seminole County incident, an off-duty officer was detained and charged by the sheriff's office after using deadly force at his friend's home because he was in fear of his life. The sheriff's office requested the help of the prosecutor. After the prosecutor's interview, the prosecutor said that the officer's claim of self-defense was valid because there was no evidence to refute his claim. However in Orange County, the Sheriff's Office did not discuss the case with the prosecutor's office before coming to the conclusion that it would not charge a home-owner who shot and wounded an inebriated intruder. In another Orange County incident, officers did not even look at an incident when a teenage male was shot in the back of the leg while allegedly trying to steal a vehicle by the owner's husband (Weaver 409). This discretion by officers is especially alarming because self-defense claims have tripled in Florida since the enactment of "Stand Your Ground" ("Florida Stand Your Ground") and over-worked officers might allow their personal bias to influence what cases they want to thoroughly investigate (Jenson and Nugent- Borakove 8). Officers are the first step in a self-defense claim. Any bias or miss-step on their part could skew the whole outcome and a criminal could be left unprosecuted and a victim left dead.

Another problematic aspect of the law is the use of term "unlawful activity" as used in Florida Statute § 776.013(3), which is listed at the top of page fifteen. Basically, the user of self-defense cannot be engaged in an unlawful activity when using self-defense. Interestingly, the unlawful activity does not have to be related to the act of self-defense. For example, a person who is driving without a license is not entitled to the presumption of reasonableness if someone

breaks into his occupied vehicle and attacks him. While someone who is in the same situation and has his driver's license on him, would be granted the presumption of reasonableness (Megale 122); even though, having a driver's license is unrelated to the attack or act of self-defense. Also, this phrase's vagueness leaves more questions than answers. Associate Professor Megale at Barry School of Law illustrates some of those key questions, "Must the activity rise to the level of a felony, or is a misdemeanor sufficient? Must law enforcement charge the crime for it to be used in withholding the presumption of reasonable fear?" (122) An incident often used to illustrate how critical it is to have a precise definition of this phrase is the Galas case. In this Port St. Richey case, Jacqueline Galas, a known prostitute, went over to her frequent client, Frank Labiento's, home to carry out their usual exchange of sex for money. Only this time it was different. Labiento pulled out a gun to shoot Galas. Galas pleaded for her life and tried to calm him down. Fortunately the phone rang, and Labiento turned away from Galas to answer the phone and left the gun on the table. When he returned, Galas had retrieved the gun and fired a fatal shot to his chest. Galas was arrested and charged with second degree murder. The prosecutor dropped the charges because he said that her claim of self-defense was valid (Lake). Critics of this decision mentioned that Galas was engaged in an unlawful activity as a prostitute and should not be protected under "Stand Your Ground" (Zbrzezny 262). By not offering a definition of "unlawful activity", the law leaves prosecutors and officers a lot of leeway in using their discretion in determining what acts constitute unlawful activity and who is entitled to self-defense's protections (Weaver 412). When dealing with a law that pertains to life, death, and liberty, more concrete parameters should be set.

The Florida legislature granted civil and criminal immunity for those acting in self-defense with Florida Statute § 776.032 (1), which states:

A person who uses forces s. 776.12, s. 776.013, or s. 776.031 is justified in using such force and is immune from the criminal prosecution and civil action for the use of such force . . .

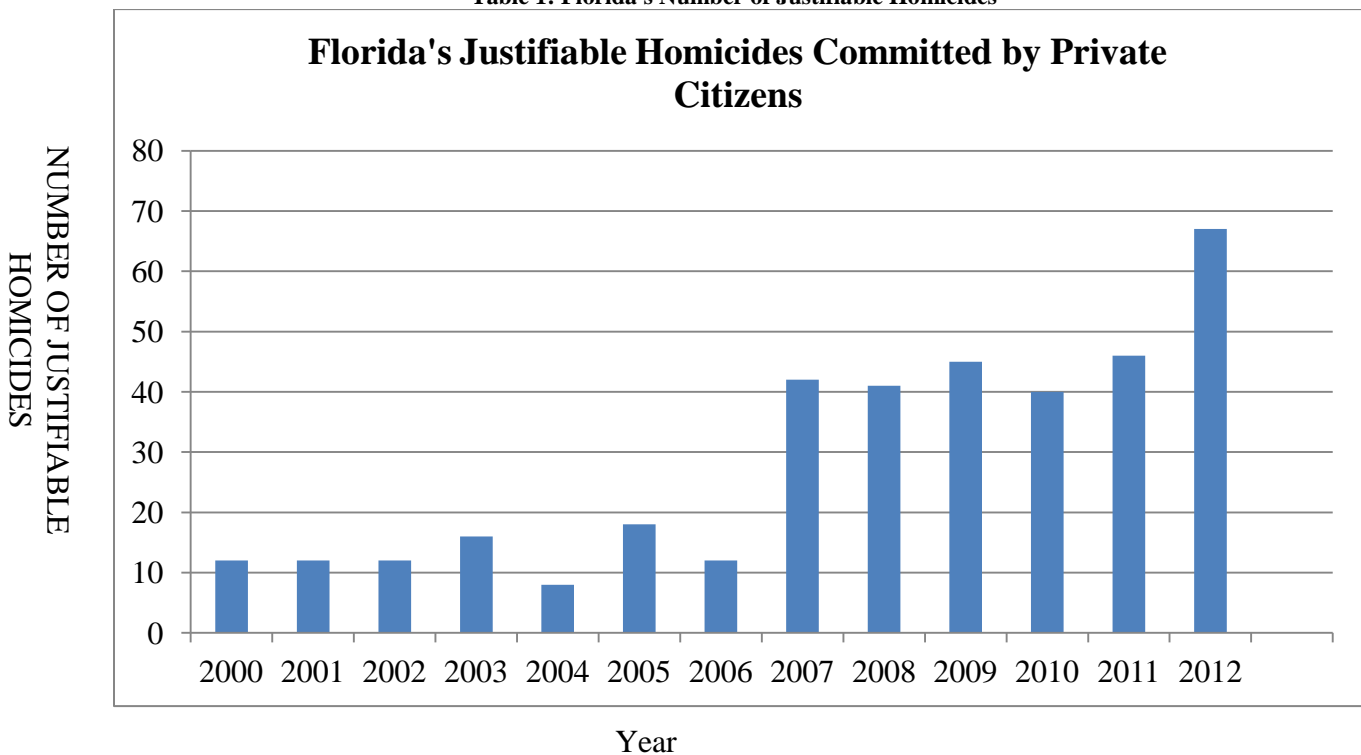
The rationale behind this law “is to eliminate the fear of prosecution experienced by those who may act in self-defense (Megale 119).” However, the lack of guidelines for enforcing this law has created opportunities for inconsistent application of the statute (Megale 119). This is best illustrated in the cases of *Hair v. State of Florida*, 17 So. 3d 804 (2009) and *State of Florida v. Heckman*, 993 So. 2d 1004 (2007). In *Hair v. State of Florida*, the First District Court of Appeal held that the immunity applied to Jimmy Hair after he shot and killed an intruder who allegedly attacked him through the open window in a car. Interestingly, Hair shot the intruder while the intruder was retreating. The court stated that the law “makes no exception from the immunity when the victim is in retreat” (17 So.3d at 806). Conversely, in *State of Florida v. Heckman*, the Second District Court of Appeals said, “immunity does not apply [where] the victim was retreating” (993 So. 2d at 1004). In this case, Heckman shot an intruder after the intruder left Heckman’s garage. This court held that Heckman was not going to be given immunity. These contrasting rulings in these factually similar cases illustrate how there should be more guidelines in this statute to promote uniform application. Another problem with this part of the law is how it bars innocent bystanders or their families from seeking criminal and civil remedies. For example, suppose someone is negligent and reckless in their use of self-defense and shoots and kills not only their attacker but a child. The 2006 Shardavia Jenkins incident, helped to shine some light

on this gray area. In Miami, Damon Darling and Laroy Larose, two rival gang members, began to shoot at each other. Nine-year old Shardavia Jenkins was caught in the crossfire and shot in the neck. Jenkins died in her mother's arms (Wright). Darling claimed that he should be entitled to immunity because it was defending himself from Larose. His immunity hinged on his self-defense claim. His claim ultimately failed and he was convicted instead of manslaughter, instead of the higher charge of second degree murder (Wright). He has continued to claim immunity under self-defense on appeal for years. Without a doubt, his use of an AK-47 and involvement in a gang played a role in his defense failing, but what about cases when the citizens are otherwise law abiding?

Aftermath of "Stand Your Ground"

Justifiable Homicides

Table 1: Florida's Number of Justifiable Homicides



The data was collected from the Florida Department of Law Enforcement, FDLE. The FDLE defines “justifiable homicide” as “the killing of the perpetrator of a serious criminal offense either by a law enforcement officer in the line of duty or by a private citizen, during the commission of a serious criminal offense.” To obtain a clearer picture of the relationship between “Stand Your Ground” and justifiable homicides the above table only includes justifiable homicides committed by private citizens. The law went into effect October 2005, so 2008 is a good starting point for comparison of the number of justifiable homicides after the law’s passage. From 2000 to 2005, the number of civilian justifiable homicides ranged from a low of eight to a high of sixteen. The average of this period was exactly twelve killings per year. On the other hand, from 2008 to 2012, the numbers ranged from forty to a high of sixty-seven killings. While the 2000 to 2004 period never experienced more than twenty justifiable homicides in a year, from 2008 to 2012 the number constantly was in the forty’s. The outlier being 2012, with a total of sixty-seven killings. The average of this period is about forty homicides per year. The average of justifiable homicides increased by a little over triple after the passage of “Stand Your Ground”. The dramatic increase of justifiable homicides after “Stand Your Ground” is undeniable. A possible explanation is that under “Stand Your Ground” homicides that may have been defined as murder or manslaughter can now be considered justifiable homicides because of the elimination of the duty to retreat and presumption of reasonableness.

State of Florida v. Zimmerman

On February 26, 2012, in Sanford, Florida, Trayvon Martin was returning to his father’s home after purchasing an Arizona Iced Tea and a bag of Skittles from a 7-Eleven . During his return, he was noticed by self-appointed neighborhood watchman George Zimmerman.

Zimmerman thought that Trayvon looked suspicious and called the police. They told him to stay put but Zimmerman did not follow their directions. Zimmerman approached Martin and a brawl ensued. In the end, Zimmerman shot and killed Martin. Zimmerman told the police that it was self-defense. Since no one could rebut Zimmerman's claim, he could not be arrested at that time under the "Stand Your Ground" law. The whole country was captivated by this story. President Barack Obama referenced Martin in a speech by saying, "Trayvon Martin could have been me 35 years ago" (Caputo). Rallies were held around the country, and people, from college students to Congressmen, wore hoodies as a tribute to Martin. All eyes were on Florida to see what would be done. The Sanford Police Department faced heavy criticism for not arresting Zimmerman for forty-four days (Salmon). The massive attention caused Governor Rick Scott to appoint State Attorney Angela Corey to act as special prosecutor on the case. On April 11, 2012, the State of Florida charged Zimmerman with second-degree murder (Feingold and Lorang 214- 216). The trial began in June 2013 (Gutman). In July, George Zimmerman was found not guilty of second-degree murder. A positive result from this horrific event was that many states and lawmakers began examining their own "Stand Your Ground" laws to ensure that a situation like this is would not be repeated.

Rick Scott's Task Force

Due the nationwide criticism that Florida faced for "Stand Your Ground" from the Trayvon Martin incident, Gov. Rick Scott assigned a nineteen person panel to analyze the law and make recommendations to him and the Florida legislature for action that they should take (Kassab). Members of the force included judges, criminal defense attorneys, prosecutors, and law enforcement officers (Dara). Instead of recommending significant adjustments to the law,

the force basically said that the law was fine the way it was. Its primary recommendation was that law enforcement should limit neighborhood watch groups to observing and reporting activities and not to “pursue, confront or provoke potential suspects” (Dara). Gov. Scott has stated that he is standing by the task force’s recommendation and said, “I believe “Stand Your Ground” should stay in the books” (Ferriss). The Senate has taken the task force’s recommendation to heart and have developed S.B. 130 which requires the Florida Department of Law Enforcement to create “a uniform training curriculum for county sheriffs and municipal police departments to use in training participants in neighborhood crime watch programs” (“Use of Deadly Force”).

Proposed Legislation

Throughout the years, Florida has had numerous proposed bills aimed at both restricting the protections of self-defense and broadening it. For example, in response to Jenkins incident mentioned previously, Senate Bill 878 was introduced to the Florida Senate and House Bill 371 was introduced to the Florida House of Representatives in 2007. A goal of these bills was to remove criminal and civil immunity to defendants who harm innocent bystanders. Another provision called for the addition of a definition of unlawful activity to be added to the “Stand Your Ground” statute: “ activity undertaken by a person which is prohibited by laws of this state” (H.B. 371; S.B 838). The last provision required that a person’s use of deadly force in self-defense be based on a belief from an overt act committed by the supposed aggressor. Neither of these bills were able to make it past their respective houses (H.B. 371; S.B 838). Another 2007 bill was Individual Personal Private Property Protection Act of 2007. This bill would not allow businesses to prevent their employees, customers, or invitees from bringing a gun into the

business' parking lot and storing them in their vehicles. This bill also did not make much progress (H.B. 1417). However, 2008's Preservation & Protection of the Right to Keep & Bear Arms in Motor Vehicles Act with the same provision passed the House in a vote of seventy-two to forty-two, the Senate on a vote of twenty-six to thirteen, and was signed by the governor in April that year (H.B. 503). Other notable passages are 2008's S.B. 948, which increased the length of concealed gun licenses from five to seven years, and 2012's H.B. 5601, which reduced the maximum fees for concealed weapons license from eighty-five dollars to seventy-five dollars. Whether then the reader thinking of these bills individually, the author urges the reader to think of them as operating in tandem. By lowering the price and making the licenses last longer, legislators are encouraging people to obtain licenses and weapons. A key provision of "Stand Your Ground" is that a person cannot be engaged in unlawful activity. Using a gun that one is not legally authorized to use or possess, should disqualify someone from the protections under "Stand Your Ground." Having a license does make a significant difference. In regards to businesses not being allowed to restrict employees, invitees, and customers from storing a gun in their cars, it allows employees, invitees, and customers to have access to a gun in a place of a business in case they need to use them for self-defense.

CHAPTER 2: ALABAMA

Prior to “Stand Your Ground”

Similar to Florida, Alabama found itself among the minority of states that imposed the duty to retreat for most of its history (Bobo 353). Former Alabama Supreme Court Judge George Washington Stone was a leader in laying the foundation for this (Bobo 353). He sat on the bench for twenty seven years from 1856 -1865 and 1876 – 1894 (Brown 21). One of his chief concerns was the sacredness of human life (Brown 21). He grew tired of lives lost in street fights and personal disputes not only in his state but the South as a whole (Bobo 353). A solution he came up with was to limit the law of self-defense (Brown 21). He saw and got the rest of the court to see that imposing the duty to retreat was essential in achieving this goal (Bobo 353). According to Stone, “its observance would exert a wholesome restraint on unbridled passion and lawlessness, and would, in the end preserve to the commonwealth and many valuable lives” (Brown 23).

Judge Stone and the rest of the Alabama Supreme court first solidified Alabama’s obedience to the duty to retreat in *Judge v. State of Alabama*, 58 Ala. 406 (1877). In this case, Wallace was the foreman of plough squad on a plantation. Part of his job was to ensure that his subordinates did their assigned tasks. He instructed the defendant Judge to hurry up with his work. Judge took exception to this command and a confrontation ensued. Wallace went into his right pocket for what Judge thought was a knife. Judge hurriedly picked up a wagon standard and hit Wallace four times with it. Members of the plough squad were able to separate the two. When Wallace got up, Judge hit him one last time in the head. He would die a few hours from a fractured skull due to the attack (58 Ala. at 406). Stone wrote on behalf of the court, “. . .no man

stands excused for taking human life, if, with safety to his own person, he could have avoided or retired from the combat. . .” (58 Ala. at 413).

The Alabama Supreme Court would elaborate on this statement in *Carter v. State of Alabama*, 82 Ala. 13 (1886), by saying:

The duty of retreat which is imposed by law upon combatants, under certain circumstances, has in view the prevention or avoidance of unnecessary bloodshed. The right of self-defense can not innocently be carried to the last resort of taking human life until the defendant has availed himself of all proper means in his power to decline combat by retreat, provided there is open to him a safe mode of escape--that is, when he can safely and conveniently retreat without putting himself at a disadvantage by increasing his own peril in the combat. Where this can be done, the law assumes that the tendency of the act of retreating will be to make the necessity of taking life less urgent and imperious. The defendant is not excused from the performance of this duty, where it exists, by the fact that he will not be placed on a better vantage-ground, or in less peril than before. If retreat does not apparently place him in greater peril, he must resort to it as a means of avoiding the necessity of taking life. (82 Ala. at 15)

Throughout the years, the Alabama judiciary was the sole voice of the duty of retreat. In 1975, the duty found another voice: the Alabama legislature. The duty was first codified in the Alabama Code of 1975 (Bobo 354). 1975’s Alabama Code § 13A-3-23(b) affirmed what the courts had been doing for years by stating, "a person is not justified in using deadly physical force upon another person if it reasonably appears or he knows that he can avoid the necessity of

using such force with complete safety." Alabama now had both statutory and judicial support for the duty to retreat.

While Alabama was in outlier in imposing the duty to retreat, it was in agreement with the majority of jurisdictions in applying the castle doctrine. In *Storey v. State of Alabama*, 71 Ala. 329 (1882), Alabama's Supreme Court clearly stated, "Of course, where one is attacked in his own dwelling-house, he is never required to retreat. His "house is his castle," and the law permits him to protect its sanctity from every unlawful invasion" (71 Ala. at 337). It is important not to assume that not having the duty to retreat in the home is an automatic right to kill. Alabama's Supreme Court made this distinction in *Carroll v. State of Alabama*, 23 Ala. 28 (1853), by stating:

The owner may resist the entry, but he has no right to kill, unless it be rendered necessary to prevent a felonious destruction of his property, or to defend himself against loss of life, or great bodily harm. If he kills when there is not a reasonable ground of apprehension of imminent danger to his person or property, it is manslaughter; and if done with malice, express or implied, it is then murder. (23 Ala. at 36)

Much like the duty to retreat, this principle was also codified in the Code of Alabama 1975. Section 13A-3-25(a) stated: "A person in lawful possession or control of premises . . . may use physical force upon another person when and to the extent that he reasonably believes it necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission of a criminal trespass by the other person in or upon such premises." Alabama had firmly established both the duty to retreat and castle doctrine through case law and statutory law. These principles would remain mostly untouched until 2006.

Road to “Stand Your Ground”

The NRA’s success in Florida motivated it to pursue other states . In addition to all the media coverage that the passage in Florida received, the NRA publicized it on its website and magazine (“This Train”). The publications were more than just bragging; the NRA hoped to attract the attention of other states. This strategy worked in Alabama. An NRA magazine is what first informed Alabama Senator Albert Means of Florida’s “Stand Your Ground” law (Bobo 360). According to Means, he received ““unbelievable response[s] from his constituents in favor of the bill” and decided to sponsor it as a bill in the Senate (Bobo 360). Means’ constituents were not the only people in favor of the bill; his fellow Alabama legislators were also on board. On February 22, 2006, the bill easily passed the Senate with a vote of thirty to two (S.B. 283) . The bill was then sent to the House where it received eighty-two votes in favor and nine against (S.B. 283). The bill was then sent to then Gov. Riley who signed it into law on April 4, 2006 (S.B. 283). With this signature Alabama became the second “Stand Your Ground” state (White).

Comparison to Florida’s “Stand Your Ground” Law

Many of the principles embedded in Florida’s law can be seen in Alabama’s law as well. The most obvious being the “stand your ground” provision that abolished the previous duty to retreat in both of these jurisdictions . Alabama’s 13A-3-23(b) states: “A person who is justified under subsection (a) in using physical force, including deadly physical force, and who is not engaged in an unlawful activity and is in any place where he or she has the right to be has no duty to retreat and has the right to stand his or her ground.” Florida’s § 776.013 (3) as quoted on page fifteen sets out the same requirements.

Another similarity is these jurisdictions extending the castle doctrine to places outside the home. Alabama's section 13A-3-23 (a) (4) permits the use of physical force, including deadly force, if the defender reasonably believes the attacker is "[i]n the process of unlawfully and forcefully entering, or has unlawfully and forcefully entered, a dwelling, residence, or occupied vehicle, or federally licensed nuclear power facility." Florida section 776.013 (a) contains almost the same wording except it does not mention anything about nuclear power facilities. In regards to automobiles, both these jurisdictions have historically refused to apply the castle doctrine to vehicles but now do.

Both of their statutes have also eliminated the reasonable person standard and replaced it with the presumption of reasonableness. Under Florida's section 776.013 (1): "A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if. . ." Alabama's section 13A-3-23(a) addresses this by saying: A person may use deadly physical force, and is legally presumed to be justified in using deadly physical force in self-defense or the defense of another person pursuant to subdivision (4), if the person reasonably believes that another person is. . ." However, these jurisdictions differ in when this presumption applies. In Florida, it applies when the attacker was about to or already had unlawfully and forcibly entered a dwelling, residence, or occupied vehicle or if the attacker removed or attempted to remove an inhabitant of one of these places. Another requirement is that the defender "knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred" (Fla. Stat. 776.013 (b)). The ending of Alabama's section 13A-3-23 (a) (4) has almost the same exact wording. However, other provisions of the

Alabama Code added more requirements. For example, the presumption applies if the defender believes the attacker is “using or about to use unlawful deadly physical”, “using or about to use unlawful deadly physical force against an occupant of a dwelling while committing or attempting to commit a burglary of such dwelling” (Ala. Code Sec. 13A-3-23 (a)(1)), “committing or about to commit a kidnapping in any degree, assault in the first or second degree” (Ala. Code Sec. 13A-3-23 (a)(2), and “committing or about to commit burglary in any degree, robbery in any degree, forcible rape, or forcible sodomy” (Ala. Code Sec. 13A-3-23 (a)(3)).

While the two jurisdictions differ on the requirements, they have the same exceptions for the presumption. Both Florida’s 776.013 2(a)- (d) and Alabama’s (4) (a) – (d) include similar exceptions when the presumption will not apply. Some of these exceptions include if defensive force is used against a lawful resident of the dwelling, residence, or vehicle, the defender is engaged in unlawful activity, the defender is using the dwelling, residence, or vehicle for unlawful activity, and using defensive force against a law officer while he is performing the duties required by his job.

The last two similarities to note are the provisions on officer investigations and civil and criminal immunity. Alabama’s 13A-3-23 (e) states: “A law enforcement agency may use standard procedures for investigating the use of force described in subsection (a), but the agency may not arrest the person for using force unless it determines that there is probable cause that the force used was unlawful.” This precise language can be found in the Florida’s statute with the exception of the subsection reference. In both these jurisdictions, a new law was passed without any specific instructions to the enforcers of the law. On another note, Alabama followed Florida’s lead by providing civil and criminal immunity for anyone that uses force in accordance

with its “Stand Your Ground” law (Ala. Code 13A-3-23 (d). Before the passage of “Stand Your Ground” in Alabama, a successful claim of self-defense did not “abolish or impair civil remedy or right of action which is otherwise available” (Ala. Code sec. 13A-3-21).

Aftermath of “Stand Your Ground”

Proposed Legislation

The Trayvon Martin incident did bring a call for repeal or reform of “Stand Your Ground” in Alabama. However, this call has largely gone ignored. For example, in 2012, Representative Coleman-Evans proposed the “Trayvon Martin” amendment which would preclude “Stand Your Ground” from being invoked by a person that followed or pursued someone prior to an altercation. This proposal did not even make it past the House (H.B. 694). Two other legislators, Democratic Rep. Alvin Holmes and Democratic Sen. Hank Sanders, have voiced their goal of introducing a bill to completely repeal the law in the next legislative session (Johnson). However, if Coleman-Evans’ minor amendment was met with such resistance, a complete repeal seems unlikely. While the Trayvon Martin incident captured the attention of Alabama legislators, a quote from Senator Beason might be indicative of the general mood in the Alabama legislature, “he said he was hesitant on passing legislation “based on a single situation” (Chandler).

Instead of “Stand Your Ground” being weakened, proposed legislation has been aimed at strengthening it. One such measure is S.B. 286. This bill expands the castle doctrine to “allow businesses the right of self-defense against intruders, allow a person to carry a pistol on the property of another under certain conditions, and employers may not restrict or prohibit the transportation or storage of a lawfully possessed firearm in an employee's privately-owned motor

vehicle while parked in a public or private parking area if that employee satisfies certain conditions”. The bill passed the Senate on a vote of twenty-five to eight on April 4th , 2013 (S.B. 286). On May 2nd , 2013, the bill passed the House on a vote of seventy-four to twenty-seven (S.B. 286). The bill is waiting for the signature of Alabama’s governor. Another measure is H.B. 46. According to one of the bill’s supporters Senator Orr, an existing loophole in the law would allow thieves to file civil suits against homeowners and business owners if they are injured while intruding. In past cases, some thieves have been awarded monetary damages after being injured by property owners (Banaszak). If the bill becomes law it could prevent criminals from suing homeowners and businesses under most circumstances. On February 23, 2012 , the bill passed the House on a dominating ninety to zero vote and on May 16, 2012, won the Senate in a twenty-nine to one vote (H.B. 46). It would go on to be enacted.

CHAPTER 3: GEORGIA

Prior to “Stand Your Ground”

Throughout its history, Georgia has aligned itself with states that did not follow the duty to retreat. *Glover v. State of Georgia*, 105 Ga. 597 (1898), set the precedent for this. In this case, Glover and another man were attending a dance. An altercation occurred between the two and Glover shot and killed the man. Glover was convicted of murder at the trial level. When the Georgia Supreme Court weighed in it said:

Under section 70 of the Penal Code, one who is himself free from fault may, without retreating, use whatever force is necessary to protect himself from a felonious assault, even to taking the life of his assailant, and be justifiable. So under section 71, one free from fault may, without retreating, take human life and be justifiable, if the circumstances are sufficient to excite the fears of a reasonable man that a felonious assault is about to be made upon him, and the slayer, who is free from blame, acts under the influence of such fears, with the bona fide purpose of preventing the felony from being committed upon him. (105 Ga. at 599)

The phrase “if the circumstances are sufficient to excite the fears of a reasonable man . . .” indicate that Georgia’s judiciary was applying the reasonable person standard. Subsequent rulings would follow the no duty to retreat principle established in this case. For example, in *Scott vs. State of Georgia*, 141 Ga. App. 848 (1977), the Court of Appeals reversed Scott’s conviction because the trial court had incorrectly imposed the duty to retreat in his case (141 Ga. App. at 850). A similar situation would happen in *Johnson vs. State of Georgia*, 253 Ga. 37 (1984). The Court of Appeals reversed the trial court’s decision for imposing the duty to retreat

on a defendant. In its opinion the court made a few interesting comments: “We hold that where self-defense is the sole defense, and the issue of retreat is raised by the evidence or placed in issue, the defense is entitled to a charge on the principles of retreat as set forth in *Glover*” (253 Ga. at 39). Almost a hundred years after *Glover*’s ruling, Georgia courts were still using it as a guide in their decisions. It is important to note that Georgia’s statutes remained mute on the duty to retreat for the majority of this state’s history. However, this did not make the principles established in *Glover* any less concrete as indicted by the second notable comment from *Johnson*: “In our view, silence of the present code on the issue of when duty to retreat may arise was not intended to eliminate the principles pronounced in *Glover*” (253 Ga. at 38).

Georgia not only followed the majority of jurisdictions in not enforcing the duty to retreat but also in utilizing the castle doctrine. Unlike the no duty to retreat rule, the castle doctrine has had statutory support for a large part of Georgia’s history. For instance, in the Cobb’s Digest of 1851, Georgia’s leading statutory authority at the time, the provisions were explicitly stated:

If, after persuasion, remonstrance, or other . . . gentle measures used, a forcible attack and invasion on the property or habitation of another cannot be prevented, it shall be justifiable homicide to kill the person so forcibly attacking and invading the property or habitation of another ; but it must appear that such killing was absolutely necessary to prevent such attack and invasion, and that a serious injury was intended, or might accrue to the person, property or family of the person. (821)

Although numerous codes would be passed, this section would be left largely intact. For instance, Section 26-1013 of the Code of Georgia of 1933, published 82 years after the Cobb’s

Digest, contains the same exact language. In fact, the statute would not receive any major revisions until the 1968 Georgia Legislature intervened and changed it to read:

A person is justified in threatening or using force against another when and to the extent that he reasonably believes that such threat or force is necessary to prevent or terminate such other's unlawful entry into or attack upon a habitation; however, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if:

(1) The entry is made or attempted in a violent and tumultuous manner and he reasonably believes that the entry is attempted or made for the purpose of assaulting or offering personal violence to any person dwelling or being therein and that such force is necessary to prevent the assault or offer of personal violence; or

(2) He reasonably believes that the entry is made or attempted for the purpose of committing a felony therein and that such force is necessary to prevent the commission of the felony. (§ 26-903)

Although the language was changed and expanded, the main idea of allowing force, including deadly, to hinder an unlawful entry into a habitation or an attack directed at someone in the habitation remained. Also, in the previous version the use of defensive force had to appear to be necessary; a reader may wonder what constitutes necessary. The 1968 version answers this by imposing the reasonable person standard. The defender must reasonably believe that the force he utilizes is necessary. Currently, Georgia's § 16-3-23 (a) applies the reasonable person standard

The last important revision would come in 1998 when the Georgia legislature defined habitation as "any dwelling, motor vehicle, or place of business" (O.C.G.A. § 16-3-24.1).

Georgia had gone beyond the traditional castle doctrine. With this provision and Georgia not

imposing the duty to retreat, it already had some features in common with other “Stand Your Ground” states.

Road to “Stand Your Ground”

In 2006, NRA spokesperson Autumn Fogg stated that after “winning a gun brawl in with gun-control proponents in Florida last year” the group was moving to pass “Stand Your Ground” law in sixteen states (Billips,Ramati). Georgia was one of the states on the list because of its already existing “Stand Your Ground”-esque provisions. It was not enough that Georgia case law said that there was no duty to retreat. The NRA wanted the Georgia statutes to say it also as Fogg indicated with this statement: "We want to make sure that the law is very clearly stated that citizens no longer have a duty to retreat" (Billips, Ramati). After viewing Florida’s 2005 passage of “Stand Your Ground”, Georgia Senator Goggans decided introduce his own version in Georgia in the form of S.B. 396 (Badertscher; Eckenrode). Goggan’s rationale was that in 1998 Georgia granted its citizens the right to carry a concealed firearm and that “Stand Your Ground” would allow law-abiding citizens to be able to use their firearms to defend themselves without a “fear of persecution” if they feel threatened (Goggans). Other senators did not feel this way. For example, according to Senator Thomas, “I would be afraid for my own life walking down the street if someone doesn't like me. The language is so arbitrary to say if you are threatened that you can attack” (Eckenrode). Despite some dissension in the Georgia Senate, on March 2, 2006, the bill passed on a vote of forty to thirteen (S.B. 396). On March 24, 2006, the bill passed the House on a vote of one hundred and seventeen to fifteen. The bill became law with the signature of then Governor Sonny Purdue and went into effect on July 1, 2006 (S.B. 396).

Comparison to Florida's "Stand Your Ground" Law

The passage of "Stand Your Ground" in Georgia did not have a dramatic effect on its statutes like it did in other states. Georgia simply added § 16-3-23.1 and § 16-3-24.2 to its already established self-defense statutes. Georgia's § 16-3-23.1 is similar to Florida's 776.013 (3) in that both abolish the duty to retreat in their jurisdictions and allow citizens to stand their ground. A difference is that the Georgia version says nothing about citizens having to be in a place where they have the legal right to be; this is assumed, but Florida version explicitly states it.

Georgia's § 16-3-24.2 is the equivalent to Florida's § 776.032. Both of these statutes apply immunity to those that act in self-defense according to the jurisdiction's statutes. However, Florida grants immunity from criminal charges and civil suits. Georgia only grants immunity from criminal prosecution. Also, Georgia does not grant immunity if the defender possessed or used a weapon that it was illegal for him to possess or use. While the Florida's "Stand Your Ground" does not specifically address the illegal possession or use of a weapon disqualifying someone from being eligible for the immunity, 776.013 (c) requires that the defender not be involved in illegal activity for him to receive "Stand Your Ground's" protections. The illegal possession or use of a weapon should preclude someone from receiving immunity.

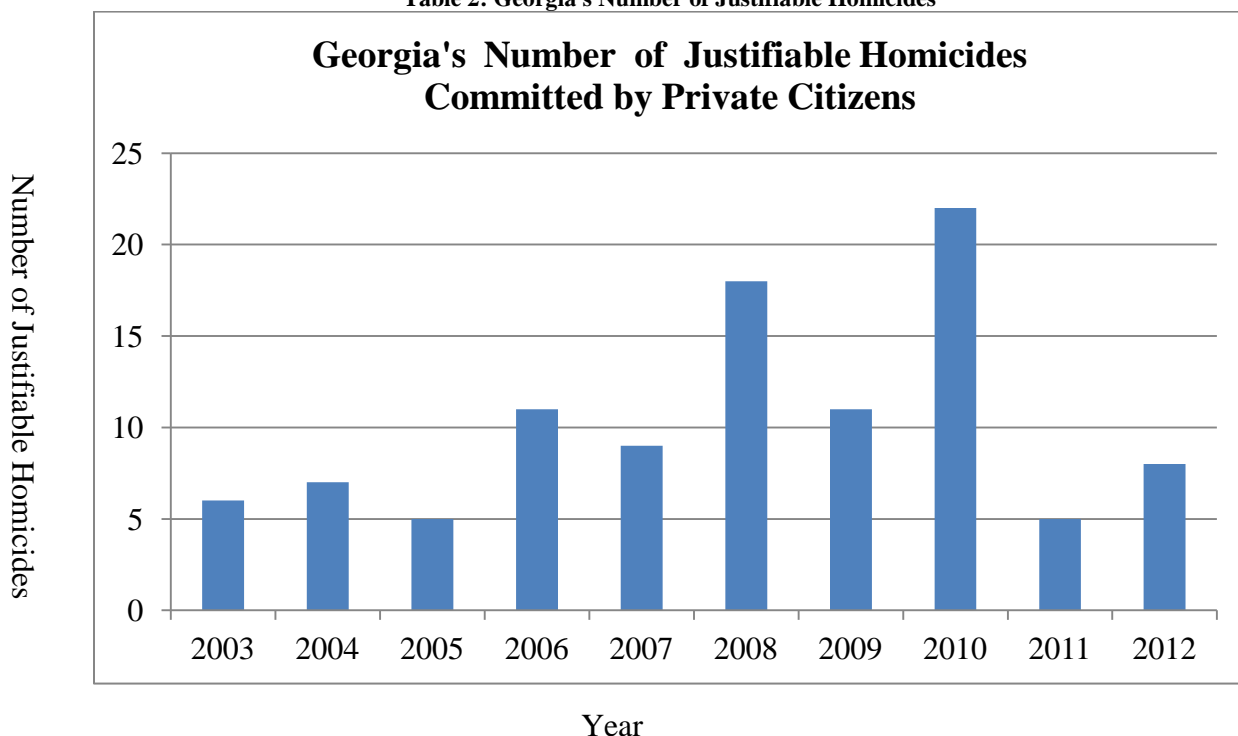
Georgia's "Stand Your Ground" is notable for key aspects that it does not include in relation to Florida's. Georgia makes no mention of the presumption of reasonableness that Florida established in § 776.013. Instead, Georgia has continued to follow the reasonable person standard. Another aspect, is how Florida addresses the behavior of law enforcement in 776.032 (2) by stating, "the agency may not arrest the person for using force unless it determines that

there is probable cause that the force that was used was unlawful”. Georgia, on the other hand, did not include any provision addressing its law enforcement officers upon the passage of its “Stand Your Ground” law.

Aftermath of “Stand Your Ground”

Justifiable Homicides

Table 2: Georgia's Number of Justifiable Homicides



Georgia’s justifiable homicides data is collected by the Georgia Bureau of Investigation, GBI. It uses a similar definition for justifiable homicide as Florida’s Department of Law Enforcement: “the killing of a felon by a peace officer in the line of duty” and “the killing of a felon, during the commission of a felony, by a private citizen” (GBI). The GBI separates those justifiable homicides committed by citizens from those committed by law enforcement. The above data reflects the former.

Georgia's "Stand Your Ground" law went into effect July 1, 2006. 2008 is a good starting point to examine the number of justifiable homicides committed by private citizens in Georgia. From the 2008 to 2012 period, there is a high of twenty-two justifiable homicides in 2010 and a low of eleven in 2011. The average for this period is roughly thirteen. In looking at the three years prior to "Stand Your Ground" being passed the high was seven killings in 2004 and the low was five killings in 2005. The average of this period is exactly six. So between these two periods, the average of justifiable homicides doubled.

Another interesting happening to note is that after the largest number of justifiable homicides in 2010, the numbers of 2011 and 2012 are similar to those of pre-"Stand Your Ground" years. Also, the number of justifiable homicides from the 2008 to 2012 period has some interesting fluctuations. For example, 2010's twenty-two killings, the peak year, doubles the previous year's number. However, 2011's five killings is the smallest thus far in Georgia's "Stand Your Ground" era. These fluctuations make it difficult to draw any concrete conclusions about the data. In contrast, Florida's numbers remained constantly in the forties after the passage of "Stand Your Ground" except with 2012's high of sixty-seven killings. Also while Georgia's average of justifiable homicides doubled under "Stand Your Ground" from six to twelve, this increase is not as dramatic as Florida going from twelve to thirty-six.

Proposed Legislation

There has been an attempted expansion of gun rights in years after the passage of "Stand Your Ground" in Georgia. 2013 was a major year for such proposed expansions. The reader should be reminded that "Stand Your Ground" is a gun law and the expansion of another gun law can strengthen "Stand Your Ground." While "Stand Your Ground" gives a defender the

opportunity to stand his ground and kill if he has to in any place where he has the legal right to be, proposals have attempted to ensure that a defendant will have access to a weapon in such a situation. For example, The “Georgia Constitutional Carry Act of 2013” was introduced. This bill called for the deletion of O.C.G.A § 12-3-10 (2) which prohibits the use or possession of any firearm other than a handgun in a historic site, park, or recreational area. Another feature of this bill is the introduction of the designation of someone being a “lawful weapons carrier”. To fall into this category a person must meet one of three requirements: the person is not prohibited by law to possess a weapon, is licensed in Georgia to carry a handgun or weapon, or licensed to carry a weapon or handgun in other state. The act proposes that this term take the place of license holder in Georgia’s statutes. A license holder is someone who holds a valid weapons carry license. This group has certain privileges; for example, it is able to carry a weapon in any location in the state unless prohibited by law and its employers cannot stop it from storing a weapon in its workplaces parking lot (H.B. 26). By supplanting this group with the more inclusive group, more people would be allowed to carry weapons. Another proposed bill was H.B. 28, also known as the “Restoring Private Property Rights for Places of Worship Act of 2013”. The goal of the bill is to legalize someone being able to carry a gun into a place of worship. Similarly H.B. 29, or “Georgia Campus Carry Act of 2013”, would legalize the possession of a weapon on the campuses of post-secondary educational institutions, most notably colleges and universities. As of August 2013, none of the bills have been able to progress past Georgia’s House of Representatives (H.B. 26; H.B. 28; H.B. 29).

Not all 2013 proposed legislation was aimed at strengthening “Stand Your Ground”. For example, S.B. 147 narrowed the scope of no duty to retreat to only instances that involve the

defense of habitation and personal property but eliminated it in instances where the defender is defending himself or another person. As of February 2013, no further action was taken on the bill and it remained in Georgia's Senate (S.B. 147). As of August 2013, the "Stand Your Ground" statute is the same as when it was passed.

CHAPTER 4: MISSISSIPPI

Prior to “Stand Your Ground”

From the 1800s and onward, Mississippi courts did not impose the duty to retreat. For example, in *Long v. State of Alabama*, 52 Miss. 23 (1876), the Supreme Court of Mississippi stated in its opinion, “Flight is a mode of escaping danger to which a party is not bound to resort, so long as he is in a place where he has a right to be, and is neither engaged in an unlawful enterprise, nor the provoker of, nor the aggressor in, the combat. In such case he may stand his ground and resist force by force, taking care that his resistance be not disproportioned to the attack” (52 Miss. at 19-20). It is interesting to note how closely of some of the verbiage used in this ruling parallels the verbiage used in Florida’s “Stand Your Ground” statute. For example, unlawful enterprise is analogous to Florida’s unlawful activity and the requirement that a person is in a place where he has a right to be is stated in both this ruling and Florida’s statute. The foundation for “Stand Your Ground” being passed had been formed more than a century before Florida’s passage.

Seven years later, in *Bangs v. State of Alabama*, 61 Miss. 363 (1883), the Supreme Court of Mississippi would concur with its earlier decision of not imposing a duty to retreat by stating, “That while a man need not fly to avoid danger, so long as he is where he has the right to be, yet he must avoid the danger, if possible, by every other means” (61 Miss. at 363). In a more current example, Chief Justice Waller stated in the footnotes of *Newell v. State of Alabama*, 49 So. 3d 66 (2010), “it has always been the law in this state that one has no duty to retreat from an attack if he is in a place where he has a right to be and is not the initial aggressor or provoker” (So. 3d at 73).

In regards to statutory support, Hutchinson's 1848, which contains the laws of Mississippi from 1798 to 1848, makes no mention of the duty to retreat or standing one's ground. In regards to self-defense, the statute states that a homicide is justified by a person:

When arresting any attempt to murder such person, or to commit any felony upon him or her, or in any dwelling house in which person shall be ,or,

When committed in the lawful defense such person, or of his or her, husband, wife, parent, child, master, mistress, or servant, when there shall be reasonable ground to apprehend a design to commit a felony, or to do some great personal injury, and there shall be some imminent danger of such design being accomplished. (ch. 64, art. 12, Title 3 (2).

The judiciary read in between the lines when it would not impose the duty to retreat. Also, the "reasonable ground to apprehend" clause is indicative that the reasonable person standard was in place. In looking at the 1983 version of this statute, the last one before the passage of "Stand of Your Ground" there is still no mention of a duty to retreat or standing one's ground. In fact, it is almost identical with the 1848 version. The only thing changed in the above blockquote is that "When committed in the lawful defense such person, or of his or her, husband, wife, parent, child, master, mistress, or servant" became "When committed in the lawful defense of one's own person or any other human being" (Miss. Code Ann. Sec. 97-3-15 (1)(f)). Mississippi's self-defense stance remained stable prior to "Stand Your Ground."

In regards to the castle doctrine, the previously mentioned statutes hint at the castle doctrine by classifying a type of justifiable homicide as preventing the murder of a person or a felony committed on the person in a dwelling house. The broad language used says nothing

about having to retreat in or standing one's ground in one's home or "dwelling house." However, the Supreme Court of Mississippi would shade in this gray area in its decisions. In *Ayers v. State of Mississippi*, 60 Miss. 709, 1883 WL 3910 (1883), in regards to property owners defending themselves against trespassers the Supreme Court of Mississippi stated:

No man is required by law to yield possession of his property to the unlawful claim of another. He may defend his possession; and while he may not kill to prevent the trespass, he may kill to protect his own person against a deadly assault made by the trespasser on him. In other words, one who assaults a trespasser to prevent the injury threatened is the actor but not the aggressor in the difficulty, and he does not lose the right of self-defense because he makes the attack. (60 Miss.,1883 WL at *3)

This ruling essentially states that a property owner can attack a trespasser as a first option to prevent bodily harm. This attack will not disqualify him from claiming self-defense. The court would offer a more concise opinion in *Williams v. State of Mississippi*, 127 Miss. 851 (1921), "A man's house is his castle, and he is never bound to retreat from it. He may stand his ground there, and kill a person to prevent his forcible and unlawful entry" (127 Miss. at 860). The Supreme Court of Mississippi had once again cleared up the ambiguity of its self-defense statute. Prior to the passage of "Stand Your Ground," Mississippi appeared to already be set in its ways when it came to self-defense.

Road to "Stand Your Ground"

In 2006, the NRA promoted "Stand Your Ground" in Mississippi (Pettus). Two different "Stand Your Ground" bills were introduced to Mississippi's Senate and House of Representatives, S.B. 2426 and H.B. 882. These bills were similar in that they both eliminated

the duty to retreat, expanded the castle doctrine to include businesses and automobile, granted civil immunity to those that commit lawful self-defense, and established the presumption of reasonableness (S.B. 2426 and H.B. 882). These bills differed in that H.B. 882 did not apply the presumption of reasonableness to law officers acting within the scope of their duty and applied the presumption of reasonableness in a place of business only if the attack occurred when the place was business was closed. S.B. 2426 made no mention of the presumption of reasonableness being inapplicable to law enforcement officers acting within the boundaries of their jobs and the presumption of reasonableness is in place when the attack occurs at a place of business or its premises regardless of the time. These differences played a role in the different fates of these two bills. H.B. 882 passed the House on a vote of one hundred and four to thirteen but failed in the Senate. S.B. 2426 passed the Senate on a vote of thirty-nine to five and passed the House in demanding vote of one hundred and fifteen to three. The House amended the bill to aforementioned clause about the presumption of reasonableness and law enforcement officers (S.B. 2426). Mississippi's then governor Barbour signed it into law on March 27, 2006. It went into effect in July of that year (S.B. 2426).

Comparison to Florida's "Stand Your Ground" Law

Mississippi's and Florida's "Stand Your Ground" statute contain numerous commonalities. The most obvious being the elimination of the duty to retreat. While Florida accomplishes this in Fla. Stat. § 776.013 (3), Mississippi does the same § 97-3-15 (4). Both sections have the same requirements that the defender be in a place where he has the he has the legal right to be and not be involved in criminal activity. Florida goes a bit further than Mississippi by explicitly stating the phrase, "[he] has the right to stand his . . . ground and meet

force with force”. Mississippi’s statute never explicitly states “stand his ground.” However, Mississippi’s statute does state that a person’s failure to retreat cannot be considered by a fact finder.

Another similarity is Mississippi adopting Florida’s definition for a dwelling. Mississippi’s § 97-3-15 (c) is the same exact definition as Florida’s § 776.013 (5) (a):

“ "dwelling" means a building or conveyance of any kind that has a roof over it, whether the building or conveyance is temporary or permanent, mobile or immobile, including a tent, that is designed to be occupied by people lodging therein at night, including any attached porch.”

This definition allows the castle doctrine to be applied to places that do not normally come to mind. For example, a dwelling could be cardboard boxes that a homeless person uses to construct a living space that he sleeps in every night. In relation to this, both states’ statutes establish a presumption of reasonableness in certain locations. Both states list dwellings and occupied vehicles. However, Mississippi’s § 97-3-15 (3) added business or place of employment to the list; on the other hand, Florida’s § 776.013 (a) added the term residence to its list. This term is distinct from dwelling because it applies to guests.

While the locations may vary, another commonality is the circumstances for the presumption to be applied. These sections allow the presumption when the attacker is in the process of unlawfully and forcibly entering or already done so from one of the state’s listed locations ,or the attacker illegally removed or attempted to illegally remove a person against his or her will from one of the state’s listed locations, and the defender knew or had reason to believe that an illegal and forcible act was occurring or had occurred. Florida goes a bit further by also offering a presumption that applies to the attacker’s intent. According to Fla. Stat.

776.013(4), “A person who unlawfully and by force enters or attempts to enter a person’s dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.” Mississippi’s statutes solely pertain to the mind of the defender.

The statutes also have some parallels in when the presumption cannot apply. In their statutes, the presumption is inapplicable if the defensive force is used against someone that has the right to be in the listed locations and if the defender is engaged in an unlawful activity. Mississippi and Florida diverge on the presumption provision concerning law enforcement officers. Florida’s § 776.013 (d) states that the presumption does not apply if defensive force is used against a law enforcement officer who enters or tries to enter a dwelling, residence, or vehicle in performance of his duties or if the officer identified himself or if the user of force knew or reasonably should know that the person entering or trying to enter the locations stated before was a law enforcement officer. Whether than focusing on someone using defensive force against an officer, Mississippi’s § 97-3-15 (3) focuses on a law enforcement officer being the user of defensive force and does not allow the officer the presumption of reasonableness.

Another areas where these statutes differ in regards to the presumption is that Florida has some extra provisions. For example, it is not enough to have the right to be in or be an a lawful resident of a dwelling, residence, or vehicle but the defender must not have an order of protection for domestic violence or a written pretrial supervision order of no contact for the presumption to apply(Fla. Stat. §776.013 (2) (a)) . Also, the presumption does not apply if “The person or persons sought to be removed is a child or grandchild, or is otherwise in the lawful

custody or under the lawful guardianship of, the person against whom the defensive force is used” (Fla. Stat. §776.013 (2) (b)).

Another similarity is that each statute grants some form of immunity. In Mississippi’s § 97-3-15 5 (b), civil immunity is granted once the defendant has been found not guilty in a criminal trial concerning a claim of self-defense. Florida’s §776.032 (1) grants both civil and criminal immunity. The interplay between these elements is important. Criminal immunity means that the defender cannot be arrested, charged, or held in custody. It essentially precludes a trial from happening. In Mississippi, a trial must occur for civil immunity to be applied. This is not the case in Florida.

A key difference in the statutes is that Florida’s § 776.032 (2) advises law enforcement to use standard procedures for investigating these cases and not making an arrest unless it is determined that unlawful force was used. Mississippi’s statute makes no such recommendation to its law enforcement agencies. Overall, Florida’s statute is more far-reaching than Mississippi’s. It covers the majority of the provisions in Mississippi’s § 97-3-15 and adds more.

Aftermath of “Stand Your Ground”

Proposed Legislation

Much like in the previous jurisdictions discussed, Mississippi’s “Stand Your Ground” law has been left untouched since its passage. However, there have been attempts to pass additional legislation that would supplement it. One such measure is 2010’s S.B. 2153. It authorized weapons permit holders to carry a firearm onto a public park, into a bar, and into a restaurant as long as the governmental body in charge of the park or owner of the bar and restaurant has not posted a notice prohibiting the weapon on the premises. According to the bill’s

sponsor Former Sen. Merle Flowers, “This bill simply allows folks to protect themselves and their families” (Elliot). The connection to “Stand Your Ground” is obvious from this quote and the implications of the bill. Former Sen. Flowers mentions protection of self and family. Two concepts that are governed under “Stand Your Ground.” This bill would allow someone to carry a gun in these locations and “stand his ground” if he needed to in order to protect himself and his family. The bill passed the Senate in a forty-eight to three vote but died in the House (S.B. 2153). A similar bill was 2011’s H.B. 405. It applied the same idea presented in S.B. 215 but in churches and other places of worship. This bill was also defeated in the House (H.B. 405). The last notable measure is 2011’s H.B. 881. It authorized any person that is licensed to carry a concealed pistol and that passes a voluntary course on the safe use and handling of a firearm to carry his or her weapons to many places that those with a license to carry but have not passed the voluntary course cannot. These places include a courtroom while court is not in session, any place where alcoholic beverages are served, college campuses, and any school, college or professional athletic event not related to firearms. This bill managed to win the support of the House in a one hundred and seventeen to two vote and dominated the Senate in a fifty to zero vote (H.B. 881). It received the signature of the governor and went into effect on July 1, 2011 (H.B. 881). The passage of the bill and the proposal of the others indicate that legislation has more aimed at strengthening self-defense and gun laws.

CHAPTER 5: TENNESSEE

Prior to “Stand Your Ground”

Unlike the previous jurisdictions discussed, Tennessee’s position on imposing the duty to retreat or not to impose the duty changed prior to Florida’s adoption of the law. In Tennessee, the concepts of “Stand Your Ground” are embodied in “True Man” rule. The “True Man” rule states:

If [a person] when assaulted was without fault and in a place where he had a right to be and was placed in reasonable apparent danger of losing his life or of receiving great bodily harm, he need not retreat, but may stand his ground, and repel force by force, and if, in the reasonable exercise of his right of self-defense, he kills his assailant, he is justified and should be acquitted. (Mischke 1001)

In the 1800s, there was a debate on whether this rule was applicable to Tennessee (Mischke 1001). *Nelson v. State of Tennessee*, 32 Tenn. 237 (1852), seemed to answer the question for the time being. The Supreme Court of Tennessee said:

. . . before the defendant could avail himself of the plea of self-defense, that he must show that he done everything that he could do, consistent with his own safety, to avoid the combat before he slew his adversary, and that he took the life of his adversary only to preserve his own life or person, from some great bodily harm. In the language of the old writers upon this subject, 'that he must give back to the wall . . . (256).

Tennessee was among the states that did recognize the English common law duty to retreat.

The precedent established in *Nelson* would face some conflict. For example, in *Morrison v. State of Tennessee*, 212 Tenn. 633 (1963), The Tennessee Supreme Court ruled:

Thus, if the person assailed is without fault, and in a place where he has a right to be, and put in reasonably apparent danger of losing his life or receiving great bodily harm, he need not retreat, but may stand his ground, repel force by force, and if, in the reasonable exercise of his right of self-defense, he kills his assailant, he is justified (212 Tenn. at 641).

It appeared that the judiciary was guiding Tennessee toward the “True Man” rule. However, the Tennessee Supreme Court would address the paradox between the rulings in *Kennamore v. State of Tennessee*, 604 S.W. 2d 856 (1980). The court would say that the “True Man” rule was never the law in its state. It reconciled the opinion in *Morrison* with *Kennamore* by saying that the defendant in *Morrison* was defending his home and the “True Man” rule should be restricted to defense of one’s home (604 S.W. 2d at 859). The Tennessee Supreme Court had cemented Tennessee’s duty to retreat status by saying: “. . . in the law of excusable homicide is the requirement that the slayer must have employed all means in his power, consistent with his own safety, to avoid danger and avert the necessity of taking another's life” (604 S.W. 2d at 859) . However, nine years later, the 1989 Tennessee legislature would take the state in the opposite direction with the passage of Tenn. Code Ann. 39-11-611 (a). It read:

A person is justified in threatening or using force against another person when and to the degree the person reasonably believes the force is immediately necessary to protect against the other's use or attempted use of unlawful force. The person must have a reasonable belief that there is an imminent danger of death or serious bodily injury. The danger creating the belief of imminent death or serious bodily injury must be real, or

honestly believed to be real at the time, and must be founded upon reasonable grounds.

There is no duty to retreat before a person threatens or uses force. (39-11-611 (a))

The last phrase clearly abolished the duty to retreat in Tennessee. It is also noteworthy the statute applies the reasonable person standard with the requirement that the defender “person reasonably believes the force is immediately necessary to protect against the other's use or attempted use of unlawful force.” The 2003 version, the last version before Tennessee adopted “Stand Your Ground,” contained the same exact wording. Tennessee was ahead of the previous jurisdictions in this study because it had already adopted a statute that eliminated the duty to retreat. To clarify for the reader, although Tennessee had a statute that eliminated the duty to retreat, it was not a “Stand Your Ground” state by the definition of this study because the statute did not grant civil or criminal immunity.

In regards to the castle doctrine, its standing in Tennessee has never been in question. As the court in the abovementioned *Kennamore* stated, the “True Man” doctrine was applied to the defense of the home. In other words, there was no duty to retreat in the home (604 S.W. 2d at 859). Other rulings concur with this principle. For example the Tennessee Supreme Court ruled in *State of Tennessee v. Foutch*, 96 Tenn. 242 (1896), that a man has the right to protect his home and family and that in exercising this right, “He is not required to retreat or escape from his own premises, but may stand his ground, and is not required to give back before he can plead self-defense” (96 Tenn. at 247). The court in *Morrison v. State of Tennessee*, 212 Tenn. 633 (1963), added more guidelines for how the castle doctrine would function in Tennessee:

In the case of a forcible attack on the habitation, the law does not require that the danger should be real -- that is, that the peril should actually exist -- to entitle the householder to

resist to the taking of life. The defendant may act upon a reasonable apprehension of danger induced by appearances. * * * On the other hand, the law does require that the appearance should be such as would excite a reasonable apprehension of the danger of peril, in order to render the killing excusable. (212 Tenn. at 640)

In this case, the intruder was younger, stronger, and heavier than the defendant and approached the defendant in an aggressive, drunken manner. The court weighed these factors and found that the defendant's killing was justified because these factors created a reasonable fear. The reasonable person standard applied to self-defense acts in the home as well. The 1989 Tennessee would make a change to this though with 39-11-611 (b). It would apply the presumption of reasonableness to anyone using force against an intruder of their residence. This presumption was also appeared in the 2003 version of the statute, the last version before Tennessee adopted "Stand Your Ground". Tennessee was again ahead of other jurisdictions in adopting an element that is common to current "Stand Your Ground" statutes.

Road to "Stand Your Ground"

When news of Florida's adoption of "Stand Your Ground" came to Tennessee, there was an initial division on the matter of Tennessee following Florida. One group of legislators felt that Tennessee's self-defense statutes were adequate in their current state. For example, former Rep. Briley said, "if it's the law already, then why change the rules, "especially ones that get into civil immunity issues?" ("House Backs Off"). Other dissent focused on the broad definitions that Florida had used under "Stand Your Ground." For instance, former Rep. Fowlkes, did not agree with the definition of the term vehicle. According to him, "'Under 'vehicle' it says means of conveyance of any kind, whether or not motorized. This could be a Greyhound bus, could this

not be just a hay wagon?” (“House Backs Off”). He feared that broad definitions could lead to confusion and murderers being able to successfully claim self-defense. The group that called for the statutory change felt that it was necessary to for citizens to be able to defend themselves. According to former Rep. Eric Swafford, “With the number of violent crimes and carjackings increasing, people need to have the ability to defend themselves and their families without the constant fear of criminal prosecution” (Humphrey). In concurring with Swafford, Former Sen. McLeary said that expanding the self-defense laws would protect “the rights of law-abiding citizens instead of the villains” (“Deadly force bill”). This division is reflected in the rocky passage of Tennessee’s “Stand Your Ground.” The first attempt was 2006’s H.B. 3113 and its Senate version S.B. 2762. These bills called for the presumption of reasonableness to be applied when a person is attacked in his residence, dwelling, or vehicle. Also, both civil and criminal immunity would be applied to anyone that lawfully uses self-defense. H.B. 3113 failed to make it past the House; while S.B. 2762 swept the Senate in thirty-two to zero vote in favor of it, it would not go on to be passed (H.B. 3113; S.B. 2762). In 2007, H.B. 668 and S.B. 187 proposed the same things but each failed to make past its respective chamber (H.B. 668 ;S.B. 187). Also, in 2007, H.B. 1907 was introduced. This bill did apply the presumption of reasonableness to the residence, dwelling, and vehicle like the previous bill but added some limitations. For example, if a person is attacked in his vehicle and used a weapon for the presumption of reasonableness to apply, possession of the weapon used cannot be illegal. Also, unlike the previous bills, the proposal narrowed its scope to just granting civil immunity to those acting under lawful self-defense. The civil immunity would not applicable to innocent bystanders or other any person that unjustified force was directed at. These restrictions seemed to do the trick because this bill swept

the House with a ninety-six to zero in favor and performed similarly in the Senate with a thirty to zero vote. It would be signed by then Governor Bresden and go into effect June 1, 2007 (H.B. 1907).

Comparison to Florida's "Stand Your Ground" Statute

In comparing Tennessee's statute to Florida's, Tennessee merged some of its elements with Florida's "Stand Your Ground." For example, as stated before Tennessee had statutorily abolished the duty to retreat. This is reflected in Tennessee's § 39-11-611 8 (b) (1). This section borrows from Florida's § 776.013 (3) by requiring that the person not be engaged in unlawful activity and be in a place where he has the legal right to be to obtain the right of non-retreat. This similarly happened in regards to the presumption of reasonableness. As previously stated, Tennessee presumed that a person using force likely to cause death or grave bodily harm had a reasonable fear of imminent danger when the attacker illegally forced his way in to the defender's residence. This concept can be seen in Tennessee's § 39-11-611 8 (c). Florida's § 776.013 (a) has dwellings and occupied vehicles in addition to the defender's residence. Tennessee's § 39-11-611 8 (c) would take dwellings and vehicles from Florida's list and go a step further by adding in business. Two key differences is that Florida's § 776.013 (3) also applies the presumption if the attacker attempts to remove someone against his or will from the dwelling, residence, or occupied vehicle and Florida's § 776.013 (4) presumes that "a person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle . . . to be doing so with the intent to commit an unlawful act involving force or violence." Tennessee's statute is quiet on these points. However, a shocking similarity that their statutes share is when the presumption is inapplicable. Tennessee's § 39-11-611 (8) (d) (1) – (4)

mirrors Florida's § 776.013 (2) (a) – (d) with the exception of the term business in certain provisions. For example, both Florida's § 776.013 (2) (a) and Tennessee's § 39-11-611 (8) (d) (1) say the presumption does not apply if defensive force is used against legal resident of the dwelling, residence, or vehicle and there is not a court order preventing the resident from being on the dwelling, residence, or vehicle. Tennessee adds business to this list. The presumption is also inapplicable if force is used against a person who is the legal guardian of a child or grandchild in an attempt to remove the child or grandchild. The statutes both prohibit the presumption "when the defender is engaged in unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity" (Fla Stat. § 776.013 (2) (c)). Tennessee's § 39-11-611 (d) (3) includes business in its provision. In regards to force used against police officers, Tennessee's § 39-11-611 (d) (4) and Florida's § 776.013 (2) (d) (4) both preclude the presumption from being applied if the force is used against a police officer "who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer."

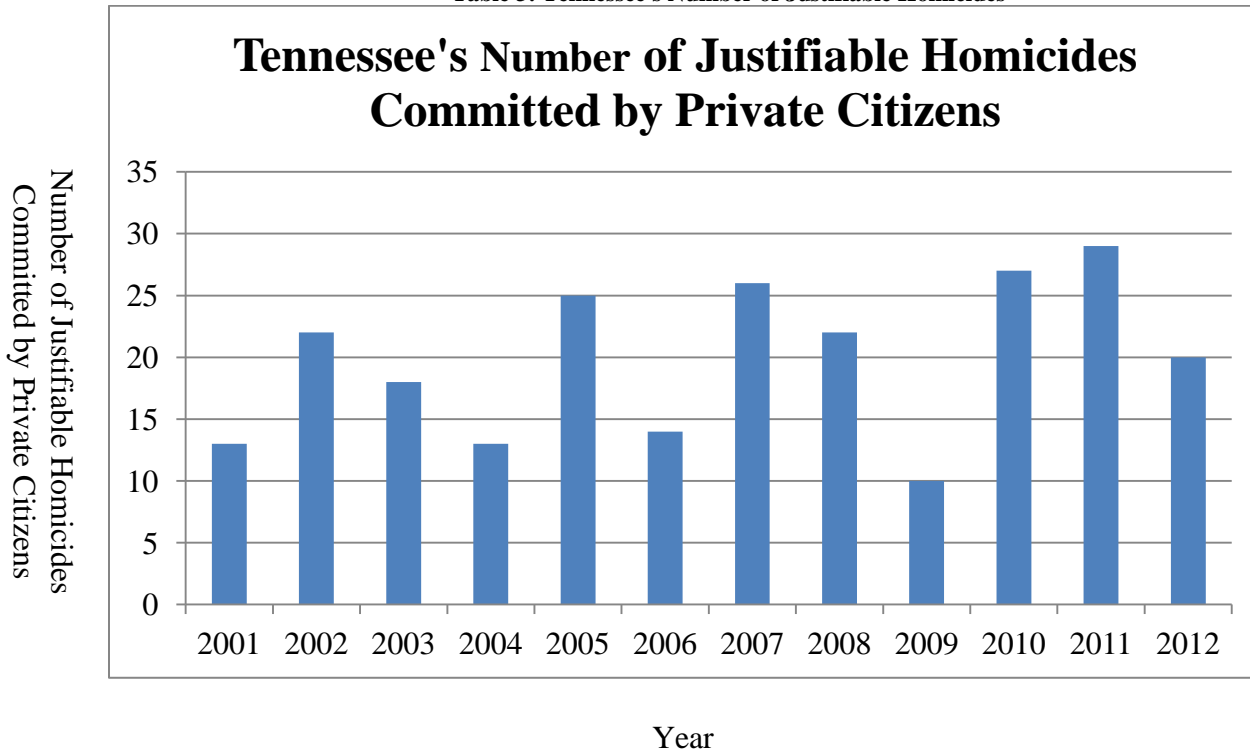
Three areas where the statutes diverge are the definition for vehicle, the granting of immunity, and officer instructions. As previously stated, members of the Tennessee legislature felt that Florida's definition for vehicle was too broad. The definition is "a conveyance of any kind, whether or not motorized, which is designed to transport people or property" (Fla Stat. § 776.013 (5) (c)). Vehicle is customarily synonymous with automobiles. However, this definition is also applicable to bicycles, scooters, and even wheelchairs. Tennessee avoids this ambiguity

in § 39-11-611 (8) by defining vehicle as “any motorized vehicle is self-propelled and designed for use on public highways”. By specifying that it must be motorized and self-propelled, bicycles and non-motorized wheelchairs and scooters are eliminated. The “designed for use on public highways” eliminates any wheelchair, scooter, or bicycle. Both jurisdictions differ in some aspects in how they deal with immunity. Florida’s § 776.032 (1) grants both civil and criminal immunity to anyone that uses lawful force in self-defense. Tennessee’s § 39-11-622 grants only civil immunity to those using lawful force in self-defense. This faces some restrictions not contained in Florida’s statute. The defender’s civil immunity does not apply to bystanders or other innocent people that were injured during his use of force or property damages caused by his use of force. Both statutes ,however, do not allow any immunity to be applied in an incident where force was used against a law enforcement officer who entered or attempted to enter a dwelling, residence, vehicles, or in Tennessee’s case a business, to perform his duties, and he identified himself in according to the law, or the defender knew or reasonably should know that he was an officer of the law (Fla. Stat. § 776.032 (1)). In regards to officer instructions, Florida’s § 776.032 (2) suggests that officers investigate cases involving force with “standard procedures.” Tennessee’s statute makes no such suggestion. For the most part, Tennessee had its foundation for self-defense established and used Florida’s “Stand Your Ground” to build upon it. In some cases, as with the limited civil immunity and re-defining vehicle, it modified Florida’s “Stand Your Ground” to satisfy its jurisdiction. While Tennessee may not have completely adopted Florida’s law, Florida did have some influence on it.

Aftermath of “Stand Your Ground” Law

Justifiable Homicides

Table 3: Tennessee's Number of Justifiable Homicides



Statistics on justifiable homicides in Tennessee are compiled by the Tennessee Bureau of Investigation. It uses the same definition as the Florida Department of Law Enforcement and Georgia Bureau of Investigation: “The killing of a perpetrator of a serious criminal offense by a peace officer in the line of duty, or the killing, during the commission of a serious criminal offense, of the perpetrator by a private individual” (Tennessee Bureau of Investigation). It also, like the other agencies, separates those justifiable homicides committed by private citizens from those committed by law enforcement. Tennessee did pass its “Stand Your Ground” statute in 2007. In the most recent years prior, 2001- 2006, the number of justifiable homicides committed by citizens ranged from a low of thirteen killings in 2001 and 2004 to a high of 2005’s twenty-

five. It is interesting to note that a year of increase is always followed by a year of decrease. For example, 2005's high of twenty-five killings is followed by 2006's fourteen, which is the second lowest, and from 2001 to 2002 the number increased from thirteen to twenty-two, only to decrease to eighteen in 2003. These fluctuations make it difficult to characterize the data from this period. The average of this period per year is 17.5 killings. As stated before Tennessee did not adopt "Stand Your Ground" until 2007. For analysis of the effects of "Stand Your Ground", this study will examine the data from 2009 – 2012 because by the law was only effect for about half of 2007 and 2008 is still too early to see the effects of it. There is a bit less diversity in this sample. The numbers are all in the twenties except for 2009's ten killings. The range is from 2009's ten justifiable homicides to 2011's twenty-nine. This group's average is 21.5 justifiable homicides per year. This is an increase of four per year from the earlier group. While it is an increase, it is quite small when compared to Florida's more than tripling and Georgia's doubling of justifiable homicides.

Proposed Legislation

Since its adoption, some proposals have been aimed at Tennessee's "Stand Your Ground" law. One such proposal is 2007's H.B. 3509. It proposed that a person's business be included in the list of places where a person is presumed to have a reasonable fear and therefore be justified in using force against an intruder. In Tennessee's original "Stand Your Ground" statute, only vehicles, residents, and dwellings are given this treatment. However, this bill gained approval from both chambers of Tennessee's legislature and the governor (H.B. 3509). It became law and the original statute was modified. Another such measure is 2009's S.B. 1606. This bill called for the elimination of the requirement that the defender cannot be engaged in

unlawful activity and officers would have investigate self-defense incidents with “standardized procedures”, similar to Florida’s provision. This bill failed to pass (S.B. 1606).

Other proposals have had a more indirect relationship with Tennessee’s “Stand Your Ground” law. For example, adding businesses to the list of places that the presumption of reasonableness apply has inspired quite a few proposals. This provision applies to both the owners and employees presumed to have had a reasonable fear when using force likely to cause death or great bodily harm. Various proposals have been aimed at ensuring that employees have a gun at their businesses of employment and protecting their gun rights. For example, 2011’s H.B. 0355 proposed that employers should be prevented from stopping employees ,who have a handgun carry permit, from storing or transporting a gun in their vehicle that is parked in the business’s parking lot. Another measure, 2012’s H.B. 3660, required employers to permit employees to carry their guns in their locked vehicles when parking in the business’s parking lot that is open to the public. 2012’s S.B. 2992 gave employees a cause of action if employers discriminate in hiring and promotion or demotes an employee because of gun ownership. All of these bills failed to become law (H.B. 0335; H.B. 3660; S.B. 2992).

Other measures were aimed at allowing firearms in more places. 2011’s H.B. 2014 allowed faculty and staff at post-secondary institutions to carry handguns on campus and 2011’s S.B. 0399 authorizes the same thing but on the condition that the faculty or staff member have a handgun carry permit. Both 2009’s S.B. 1622 and H.B. 0521 allowed non-faculty or staff members to bring guns on campus. All of these measures failed to become law (H.B. 2014; H.B. 0521; S.B. 0399; S.B. 1622). One interesting measure is 2010’s H.B. 3125. It allowed handgun carry permit holders to bring a gun into an establishment that serves alcohol if the permit holder

does not consume alcohol and the establishment does not have a posted notice saying that guns are not allowed. Guns and alcohol may not seem like an ideal combination, but this proposal managed to pass both chambers of Tennessee's legislature. However, it was vetoed by the governor and then the chambers overrode his veto. It ended up being passed on June 4, 2012 (H.B. 3125). Except for the inclusion of the term "business" in Tennessee's "Stand Your Ground" law, the law has not undergone any significant changes. Much like the other jurisdictions discussed, the passage of "Stand Your Ground" was followed by attempts to allow guns in numerous locations.

CHAPTER 6: LOUISIANA

Prior to “Stand Your Ground”

Early in its history Louisiana did not take a clear stance on imposing the duty to retreat (Bennett and Joseph 1094). For example, in *State of Louisiana v. West*, 45 La. Ann. 14 (1893), the Supreme Court of Louisiana objected to the trial judge’s jury instruction that, “In order to justify a homicide on the ground of self-defence, a person must employ all means within his power consistent with his safety to avoid the danger and avert the necessity, and he must retreat if retreat be practicable” (45 La. Ann. at 20-21). The Supreme Court of Louisiana replied by saying, “This statement is too broad. There are many cases where a person is not called on to employ all the means within his power consistent with his safety to avoid a danger and avert its necessity, and there are many cases where a person must not necessarily retreat where retreat is practicable” (45 La. Ann. at 21). Instead of definitely stating whether or not there is a duty to retreat, the court’s opinion created a gray area by not differentiating in what cases does a person have an obligation to retreat and what cases does he not. Subsequent cases would add more color to this gray color. A few months later in *State of Louisiana v. Thompson*, 45 La. Ann. 969 (1893), The Supreme Court of Louisiana did not agree with the trial judge’s refusal to give this charge and said that it was based on “ample authority”:

If you find, from all the evidence heard upon this trial, that the accused was attacked by the deceased and others who manifestly attempted, by violence, to take his life or do him great bodily harm, and under such circumstances that no retreat was practicable, then I charge you, if you should so find, that under such conditions the party who is attacked is not only not obliged to retreat, but may pursue his adversary until he has secured himself

from all danger, and if he kill him in so doing it is justifiable self-defence. (45 La. Ann. at 971- 972)

In considering this opinion in conjunction with *West*, one can infer in cases where retreat is practical that there is a duty to retreat and when retreat is impractical there is not a duty to retreat. The Supreme Court of Louisiana would add a little more color to this topic in *State of Louisiana v. Webb*, 157 La. 814 (1925), by stating:

In order for the plea of self-defense to avail an accused, and to excuse or justify a killing by him, . . . he must have retreated, if reasonably possible to do so, if to retreat would not have increased his danger or apparent danger, or if his danger would have been lessened thereby. There is no duty to retreat, if to do so would increase one's danger. (157 La. 814 at 818)

This decision appears to logically flow from the one in *Thompson*. Retreat would be impractical if it would increase a defender's danger. Louisiana appeared to have a grasp on how it would handle the duty to retreat.

In 1942, the Louisiana legislature would pass the first reliable law regarding self-defense: La. Rev. Stat. Ann. 14:20 (A) (1) – (2) (Bennett and Joseph 1083). Before this, “Louisiana's substantive criminal law had consisted of numerous overlapping and sometimes conflicting criminal statutes superimposed upon a basic system of common law crimes” (Bennett and Joseph 1083).

It stated:

A. A homicide is justifiable:

(1) When committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger ;or

(2) When committed for the purpose of preventing a violent or forcible felony involving danger to life or of great bodily harm by one who reasonably believes that such an offense is about to be committed and that such action is necessary for its prevention. The circumstances must be sufficient to excite the fear of a reasonable person that there would be serious danger to his own life or person if he attempted to prevent the felony without the killing. (La. Rev. Stat. Ann. § 14:20 (A) (1) – (2) (1942))

The statute makes no mention of the duty to retreat and stresses reasonableness. This indicates that Louisiana was applying the reasonable person standard. It is important to note this language has been used in all the subsequent versions of this statute, including the current edition. The statute's stressing reasonableness would have an impact on the duty to or not to retreat. In cases it would be treated as a peripheral issue and reasonableness would take center stage. The Supreme Court of Louisiana would illustrate this point in *State of Louisiana v. Collins*, 306 So. 2d 662 (1975), by stating, "Under the evidence, it was open to the jury to determine whether it was reasonably necessary for the defendant to kill in order to save himself. The possibility of retreat, for instance, is one of the factors here present for jury determination as to whether the defendant had the requisite reasonable belief that it was necessary to kill in self-defense" (306 So. 2d at 663). The First Circuit Court of Appeal would concur with this ruling in *State of*

Louisiana v. Stevenson, 447 So. 2d 1125 (1984), by saying, “Although there is no unqualified duty to retreat, the possibility of escape is a factor in determining whether or not a defendant had the reasonable belief that deadly force was necessary to avoid the danger” (447 So. 2d at 1133). Louisiana occupied a middle ground in regards to the duty to retreat or not to retreat prior to the passage of its “Stand Your Ground” law. A person could retreat if it was reasonable and did not have to if it was not. This principle is not as definite as the states that strictly impose a duty a retreat or allow citizens to stand their ground in all places.

In regards to the castle doctrine, the Louisiana Supreme Court set the precedent for how it would operate in the state in *State of Louisiana v. J.B. Chandler*, 5 La. Ann. 489 (1850), by opining that:

A man may repel force by force in defence of his person, habitation or property, against one who manifestly intends or endeavors by violence or surprise to commit a known felony, such as murder, rape, robbery, arson and the like, upon either. In these cases he is not obliged to retreat but may pursue his adversary until he has secured himself from all danger, and, if he kill him in so doing, it is called justifiable self-defence. (5 La. Ann. 489 at 490)

About fifty years later, the Louisiana Supreme Court would quote this ruling and use it as the guiding principle in *State of Louisiana v. Robertson*, 50 La. Ann. 92 (1898). The castle doctrine’s scope had been limited to only felonies.

Later statutory provisions would modify this principle. The 1976 version of La. Rev. Stat. Ann. § 14:20 added the castle doctrine to the Louisiana statutes by stating:

(3) When committed against a person whom one reasonably believes to be likely to use any unlawful force against a person present in a dwelling while committing or attempting to commit a burglary of such dwelling. The homicide shall be justifiable even though the person does not retreat from the counter when it appears that he would be able to do so. (La. Rev. Stat. Ann. § 14:20 (3) (1976))

This statute narrowed the scope of castle doctrine even further to just include burglary instead of the felonies listed in *Chandler*. The 1983 edition would add a place of business to this provision and apply the castle doctrine to burglaries in a place of business. The edition would also add subsection four. It broadened the scope of the castle doctrine in a case involving the home. Under this provision, no burglary had to be committed or attempted, the castle doctrine applied as soon as there was unlawful entry in the dwelling. The defender would still have to reasonably believe that the force used was necessary to stop the intruder from entering the dwelling or to make the intruder leave the dwelling. The last major revision before “Stand Your Ground” was 1997’s version including automobiles in subsection three and adding both automobiles and place of businesses to subsection four. This edition gave the home, place of business, and vehicle equal standing under the law. Those attacked in these places did not have to retreat and could use deadly force if reasonable. Louisiana was already expanding its castle doctrine years before Florida’s adoption of “Stand Your Ground.”

Road to “Stand Your Ground”

In 2006, the NRA began lobbying for “Stand Your Ground” legislation in Louisiana (Travis). It would use the same rationale that it had used to convince other states, “These bills give rights back to law-abiding people and force judges and prosecutors to focus on protecting

the rights of victims rather than criminals” (Travis). Its lobbying sparked the creation of H.B. 89 and H.B. 1097. H.B. 89 proposed that the Louisiana justifiable homicide explicitly state that there is no duty to retreat and apply the presumption of reasonableness in dwellings, vehicles, and place of businesses. On April 24, 2006, it swept the House in a ninety-nine to zero vote and did the same in the Senate on a thirty-six to zero vote (H.B. 89). It would be signed by the governor and go into effect on August 25, 2006 (H.B. 89). It led to the creation of a new statute : La. Rev. Stat. Ann. § 14:19, and it amended La. Rev. Stat. Ann. § 14:20. The amendments of R.S. 14:20 will be focused on in this thesis because they allow a citizen to stand his ground and use deadly force if necessary, fulfilling half of the requirement to make Louisiana a “Stand Your Ground” state. However, R.S. § 14:19 does not allow for deadly force to be used and is therefore not relevant to this thesis. H.B. 1097 proposed the granting of civil immunity to those that commit a homicide in the execution of lawful self-defense under R.S. § 14:19 and R.S. § 14:20. On April 20, 2009, it dominated the House in a ninety-five to one vote in favor and won over the Senate in a thirty-four to zero three weeks later (H.B.1097). The governor gave his approval and it went into effect on August 25, 2006 (H.B. 1097). It could become La. Rev. Stat. Ann. § 2800.19 and it fulfilled the second requirement for Louisiana to be considered a “Stand Your Ground” state.

Comparison to Florida’s “Stand Your Ground” Law

For the most part, every section of Louisiana’s “Stand Your Ground” law has a Florida counterpart. For example, Louisiana’s § 14:20 (C) parallels Florida’s § 776.013 (3) in that they both allow someone who is in a place where he has the right to be and is not engaged in unlawful to stand his ground against an attack and use deadly if necessary. Both of these statutes

essentially abolished the duty to retreat. In regards to the duty of retreat, an area of Louisiana's statute that Florida does not have an answer for is La. Rev. Stat. Ann. § 14:20 (D). It dictates that a finder of fact is not allowed even to consider the possibility of retreat in determining if the deadly force used by the defender was reasonable. This is a direct counter to the prevailing principle in Louisiana pre-"Stand Your Ground" that said the possibility of retreat would be one of the factors in determining if the use of deadly force was reasonable.

Another area of similarity is the application of the presumption of reasonableness. Louisiana's §14:20 (B) (1) – (2) and Florida's §776.013 (a) – (b) are in agreement in that in order for the presumption to apply the attacker must have been in "the process of unlawfully and forcibly entering or had unlawfully and forcibly entered" a list of certain locations and the defender "knew or had reason to believe that an unlawful and forcible entry was occurring or had occurred" (La. Rev. Stat. Ann. §14:20 (B) (1) – (2)). Florida's 776.013 (a) strays a little by allowing the attacker's removal or attempted removal of someone from a list of certain locations to substitute for the attacker attempting or accomplishing unlawful and forceful entry. The reader has probably noted the use of the phrase "list of certain locations." This is because the jurisdiction slightly differ on those locations. Louisiana's § 14:20 allows the presumption inside a dwelling, vehicle, or place of business. On the other hand, Florida's § 776.013 (a) allows it in a dwelling, residence, or occupied vehicle. The major differences here being Florida's allowing it a residence and Louisiana's allowing it in a place of business. Florida included residence so that the presumption could apply to the guests in someone else's home if they had to defend themselves against an intruder because dwelling historically only applied to the owner or other

habitual inhabitants of the home. Louisiana does not specify if guests are included or excluded from the presumption.

These jurisdictions differ on when the presumption is inapplicable. Florida's 776.013 (2) (a) – (d) delineate when the presumption does not apply. For example, it does not apply when defender attacks someone who has the right to be in a dwelling, vehicle, or residence, such as the owner or lease. Also, it does not apply when used against an officer who identified himself and entered the dwelling, residence, or occupied building to act within the scope of his official duties. Louisiana is mute of the exceptions to the presumption of reasonableness. The Louisiana statute is also lacking in another presumption area. Florida's § 776.013 (4) presumes that “(a) person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle” is doing it with the intent to commit an illegal act involving violence or force. Louisiana's statute makes no such presumption.

The jurisdictions also differ in the area of immunity and how officers should handle these cases. Florida's § 776.032 (1) grants both civil immunity and criminal immunity to those when someone is justified in using force. Louisiana's § 2800.19 only grants civil immunity. On another note, Florida's 776.032 (2) suggests to law enforcement officers that they can use standard procedures to investigate self-defense but demands that they do not make an arrest unless they have probable cause. Louisiana's § 14:20.1 commands law enforcement to conduct a full investigation if they are suspicious circumstances surrounding a death or a death results from violence and a claim of self-defense is made. Overall, Florida had a strong influence on Louisiana's “Stand Your Ground” law. More than half of Louisiana's can be found somewhere

in Florida's statute. However, Louisiana has not blindly adopted a statute that is identical to Florida's; it selected certain provisions from Florida and used them as the foundation for its own.

Aftermath of "Stand Your Ground"

The *Trayvon Martin* incident shook up the Louisiana legislature and attempts were made to amend Louisiana's "Stand Your Ground" statute. One such attempt was 2012's H.B. 1100. It proposed that La. Rev. Stat. Ann § 14:20 be amended and allow finders of fact, such as judges or jurors, to consider pursuit in determining if the pursuer was the aggressor. This bill passed the House in a vote of fifty-five to thirty-two but failed in the Senate (H.B. 1100). Another attempt was S.B. 719. It proposed that a subsection E be added to La. Rev. Stat. Ann § 14:20. This subsection would not allow anyone who initially incited an altercation to have the protections under La. Rev. Stat. Ann. § 14:20. If the altercation resulted in a death of someone other than the initial inciter, it would not be considered a justifiable homicide. It failed to gain support in either chamber of the legislature (S.B. 719). Another proposal was S.B. 738. It proposed the creation of La. Rev. Stat. Ann. 14:20.1 which would require law enforcement officers to conduct a full investigation "[w]henver a death results from violence or under suspicious circumstances and a claim of self-defense is raised." The bill's sponsor Sen. Morrell hinted that he did not feel like this was done in the *Trayvon Martin* incident by saying, "I've seldom heard of an investigation that complicated moving that quickly" (Adelson). The bill won over the Senate in a thirty-one to one vote and swept the House in an eighty-seven to zero vote (S.B. 738). It go on to be signed by the governor and go into effect June 6, 2012 (S.B. 738). This is the only bill that passed in reaction to the *Trayvon Martin* incident out of all the states in this study.

Louisiana, like the other states discussed, also had proposals directed at expanding gun rights. 2006's H.B. 199 proposed that handgun permit holders be authorized to carry concealed handguns on college and university campuses. It died in the House (Louisiana State Legislature). It would be revived again in 2009 as H.B. 27 and be defeated again (Louisiana State Legislature). Another proposal was 2012's S.B. 152, also known as the Louisiana Firearms Freedom Act. This bill said that any firearm and firearm accessories produced in Louisiana and that remains in Louisiana is immune from federal regulations and is only subject to Louisiana's laws. S.B. 175 proposed the same idea and had the same fate as S.B. 152: defeat in the Senate (Louisiana State Legislature). While Louisiana followed the path of the other states in attempts to expand its gun laws, it managed to blaze its own trail with the passage of R.S. 14:20.1 in response to the *Trayvon Martin* incident.

CHAPTER 7: SOUTH CAROLINA

Prior to “Stand Your Ground”

Throughout its history, South Carolina has been among the jurisdictions that did impose the duty to retreat. The duty to retreat has been upheld by the South Carolina Supreme Court on numerous occasions. One such instance is *State of South Carolina v. Trammell*, 40 S.C. 331 (1894). At trial the defense objected to this instruction given by the judge, “under the laws of this State, if it was necessary to retreat, to avoid shedding human blood, retreat should be made” (40 S.C. 331 at 33). On appeal, the South Carolina Supreme Court said the judge’s statement was correct (40 S.C. 331 at 33). A similar situation would happen in *State of South Carolina v. Hardin*, 114 S.C. 280 (1920). This time the South Carolina Supreme Court would approve this instruction:

If he has, [the user of force], satisfied you of that, he has got to go a step further and show you that he had no other probable means of escape except to take the life of his assailant. The law does not permit one to take human life lightly. If by retreating he can avoid taking human life without increasing his own danger of receiving serious bodily harm or losing his own life, he must do it. . . . A man must have no other probable means of escape except to take the life of his assailant. (114 S.C. at 280)

The defense argued that the charge was incorrect because it required the defendant to show that he had no other probable means of escape, a burden that was went beyond what the law required (114 S.C. at 280) . However, the South Carolina Supreme Court would characterize the instruction as “a clear, lucid exposition of the law” (114 S.C. 280 at 295). This principle would

find itself in other rulings. For example, in *State of South Carolina v. Jackson*, 227 S.C. 271 (1955), the South Carolina Supreme Court ruled :

Further, he must show that he had no other probable means of escape except to take the life of his assailant or stated another way, that he had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily harm than to act as he did in the particular instance; that it is one's duty to avoid taking human life where it is possible to prevent it even to the extent of retreating from his adversary unless by doing so the danger of being killed or suffering serious bodily harm is increased or it is reasonably apparent that such danger would be increased. (227 S.C. at 279)

While the duty to retreat has support from case law, until South Carolina's passage of "Stand Your Ground" , South Carolina had no statute pertaining to self-defense. In other words, there was no statutory verification of the duty to retreat. The rules of self-defense were exclusively the domain of South Carolina's judiciary.

The castle doctrine has also been historically recognized in South Carolina. In fact, in the previously mentioned *State of South Carolina v. Hardin*, 114 S.C. 280 (1920), the South Carolina Supreme Court also approved of this instruction: "When a man is in his own house, he need not retreat" (114 S.C. at 280). In another previously mentioned case, *State of South Carolina v. Jackson*, 227 S.C. 271 (1955), the South Carolina Supreme Court said: ". . . a man's home is his castle where if he or a member of his family is assaulted in the home, he is not required to retreat but may use such force as is reasonably necessary to protect himself or a member of his family from death or serious bodily harm and may combine such force as is reasonably necessary to eject the assailant even to the extent of taking life" (227 S.C. at 279).

The judiciary would also expand the castle doctrine to include places other than the home. For instance, in *State of South Carolina v. Marlowe*, 120 S.C. 205 (1921), the court said that the trial court erred in refusing to give this instruction: “The law of retreat in self-defense has no application where one is on his own premises, and the jury is charged that, where a member of a club is in the club rooms and the rooms are owned by the club, the law of retreat does not apply to such a club member when attacked by another in the club rooms” (120 S.C. at 207). The court offered this for its reasoning, “This was error. A man is no more bound to allow himself to be run out of his rest room than his workshop” (120 S.C. at 207). This ruling would be followed by *State of South Carolina v. Bowers et al.*, 122 S.C. 275 (1923). In this case, the South Carolina Supreme Court did not approve of trial judge refusing to give this instruction:

One who is assaulted in his own house is not required to retreat before exercising his right of self-defense, and I charge you that a man's place of business is within the meaning of this rule and is deemed his dwelling, and he need not retreat therefrom in order to invoke the benefit of the doctrine of self-defense. (122 S.C. at 279)

It said that this instruction was “a correct proposition of law” (122 S.C. at 279). Much like the duty to retreat, there was no statute regarding the castle doctrine until South Carolina’s adoption of “Stand Your Ground.”

Road to “Stand Your Ground”

In 2005, the same year that Florida adopted “Stand Your Ground,” South Carolina’s legislature put the wheels in motion for “Stand Your Ground’s” passage by prefiling H.B. 4301 for consideration in 2006 (H.B. 4301). The bill proposed the elimination of the duty to retreat, applied the presumption of reasonableness to dwellings, vehicles, and place of businesses, and

granted civil and criminal immunity to those that use justifiable force. Advocates used the same reasoning that had been used in other jurisdictions that the law was needed for citizens to be able to protect themselves and not have to worry about being charged with a crime themselves, such as murder (“A Camper’s Tent”). The bill would sweep the House in a one hundred and six to zero vote on February 8, 2006 and pass the Senate on June 1, 2006; no votes were recorded (H.B. 4301). Former Governor Mark Sanford would sign it into law and would go into June 9, 2006 (H.B. 4301). South Carolina had turned its back on over a century’s worth of case law upholding the duty to retreat and passed its first self-defense statute.

Comparison to Florida’s “Stand Your Ground” Law

Possibly because of South Carolina’s previous lack of a self-defense statute of its own, it borrowed heavily from Florida’s “Stand Your Ground.” Florida’s §776.013 (3) and South Carolina’s §16-11-440 (C) both eliminate the duty to retreat for someone who is not engaged in unlawful activity, who is attacked in any place where he has the right to place, and allows the person to stand his ground under these circumstances. The only distinction being that South Carolina’s §16-11-440 (C) includes the phrase “including, but not limited to, his place of business”. Florida’s §776.013 (3) makes no such distinction.

Another area where South Carolina and Florida share a similarity with a minor difference is the presumption of reasonableness. Florida’s §776.013 (1) (a) – (b) and South Carolina’s §16-11-440 (A) (1) – (2) both set out the requirements for the presumption of reasonableness to apply to a situation. In both jurisdictions, the presumption is triggered when a person is the process of illegally and forcefully entered a dwelling, residence, or occupied vehicle , or has already done so, or attempted to remove someone against his or her volition, and the defender knew or had

reason to think that illegal entry was in the process of occurring or had already occurred. The laws also share similar provisions regarding when the presumption of reasonableness is inapplicable. South Carolina's §16-11-440 (B) (1) – (4) and Florida's §776.013 2 (a) – (d) list these exceptions. In both statutes, the presumption will not apply if force is used against a person who has the right to be in the dwelling, residence, or occupied vehicle, such as the owner or leasee, the person that the attempted removal is directed, such as a child, is in the legal custody of the person that the defender attacked, the defender is engaged in an unlawful activity or using the dwelling, residence, or occupied vehicle to achieve a criminal purpose, and if the defender attacks an law enforcement officer who enters or tries to enter the a dwelling, residence, or occupied vehicle to carry out the duties of his job and he legally identifies himself, or the defender reasonably should know that he was a law enforcement officer. One place where they deviate is that Florida's § 776.013 (2) (a) states that the presumption can apply if the defender uses force against the lawful resident or someone has the right to be inside of a residence, dwelling, or occupied vehicle whenever there is an order of protection against the lawful resident or occupant for domestic violence. South Carolina's statute is mute on this point.

The statutes share similarities with certain distinctions in some other important areas as well. One example is the presumption of the attacker's intent. Florida's § 776.013 (4) and South Carolina's § 16-11-450 (D) both state: "A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime. . ." A language difference being that Florida uses the phrase violence instead of a violent crime. South Carolina's § 16-11-450 (E) goes a bit farther by declaring that anyone who enters or tries to

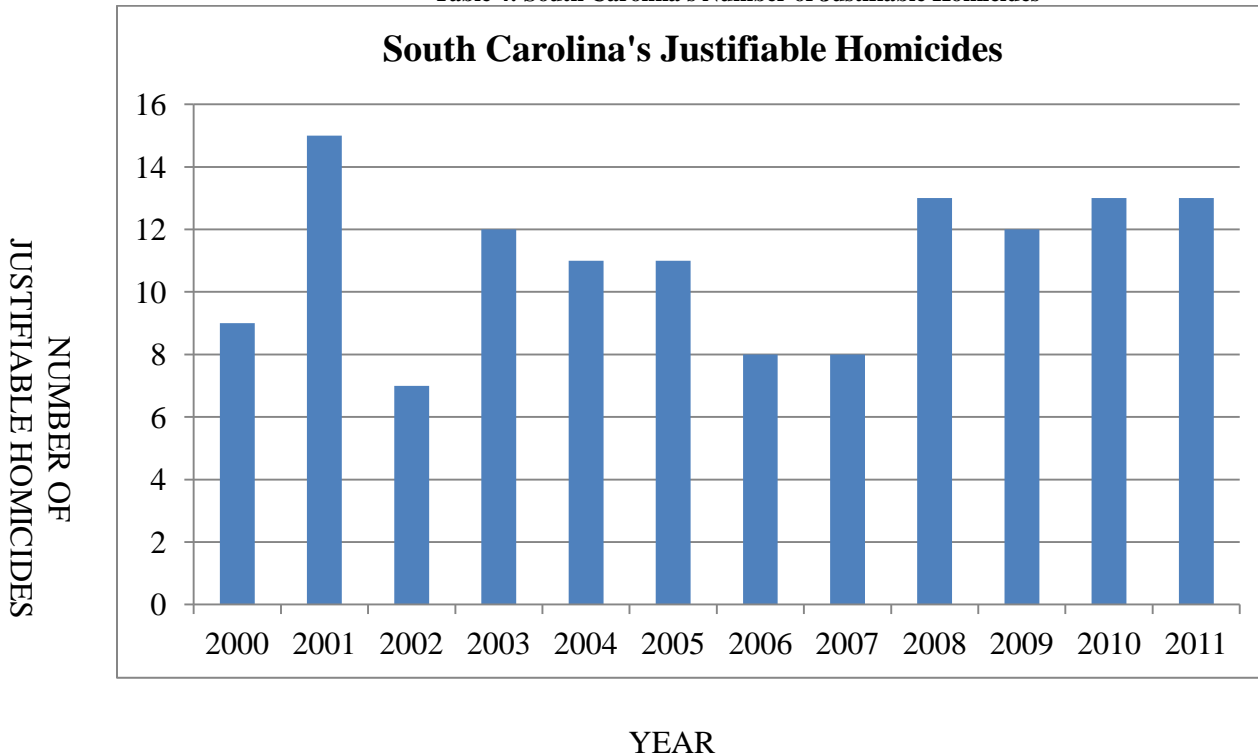
enter a dwelling, residence, or occupied vehicle who is “in violation of an order of protection, restraining order, or condition of bond is presumed to be doing so with the intent to commit an unlawful act. . .” Florida has no such provision. Another area of congruence is immunity. South Carolina’s § 16-11-450 (A) and Florida’s § 776.032 (1) both grant civil and criminal immunity to those who used lawful in accordance of these jurisdiction’s statutes. They both also state that the civil and criminal immunities will not apply if the force was used against an officer acting within the scope of his duties and who identified himself, or the defender knew or reasonably should have known the victim was an officer of the law. A key difference is that Florida’s 776.032 (1) talks about the lawful use of any type of force. In contrast, South Carolina’s § 16-11-450 (A) only specifically discusses “the use of deadly force”. Another difference is that Florida’s § 776.032 (1) states that criminal immunity means “no arrest, detaining in custody, and charging or prosecuting the defendant.” South Carolina’s § 16-11-450 (A) does not go to such lengths to clarify what criminal immunity means. The last area is providing instructions to law enforcement officers. Florida’s § 776.032 (2) and South Carolina’s § 16-11-450 (B) mirror each other in advising law enforcement officers to use standard procedures in these cases but not to make an arrest unless there is probable cause that suggests the force used was unlawful. Once again, Florida and South Carolina differ in language. Florida’s statute talks about the use of force in general, while South Carolina’s explicitly discusses use of deadly force.

As evidenced by this comparison, South Carolina’s “Stand Your Ground” is very similar to Florida’s. While South Carolina neglects some of Florida’s provisions and adds some of its own, it is one the states whose “Stand Your Ground” most strongly resembles Florida’s.

Aftermath of “Stand Your Ground”

Justifiable Homicides

Table 4: South Carolina's Number of Justifiable Homicides



The above data is taken from the South Carolina Law Enforcement Division (SLED). It uses the same definition for justifiable homicide as the other states in this study “the killing of a felon by a peace officer in the line of duty” and “the killing of a felon, during the commission of a felony, by a private citizen” (SLED). A difference between SLED and the other agencies that provided justifiable homicide statistics is that SLED does not separate justifiable homicides committed by private citizens from those committed by a law enforcement officers.

To begin, since “Stand Your Ground” went into effect in 2006, the 2000- 2005 should be looked at for comparison. Some notables characteristics in this period are that it has the highest number of justifiable homicides in a single year with 2001’s fifteen killings and also the lowest

number with 2002's seven killings for the entire 2000- 2011 period. Another distinction is that each year of increase is followed by a year of decrease and a year of decrease is followed by a year of increase. In other words, there is never consecutive years of increase or decrease. For example, 2000's nine increased to 2001's fifteen but this fifteen decreases to seven in 2002. This pattern is followed in 2003- 2005. The average of this period is about 10.8 justifiable homicides per year.

The next period for examination is 2008 to 2011 because the law went into effect in late 2006, 2008 should be a good starting point to see any of its effects. This period is more uniform in numbers than the previous period. There were thirteen justifiable homicides for three years, 2008, 2010, and 2011, and twelve for one year, 2009. This period's range is from 2009's twelve killings to other the other years' thirteen. The average for this period is about 12.8 justifiable homicides for year. There is a subtle increase of about two justifiable homicides per year.

Proposed Legislation

The *Trayvon Martin* incident sparked some activity in the South Carolina legislature. Cognizant of the similarities between South Carolina's "Stand Your Ground" and Florida's "Stand Your Ground," legislators recognized that the *Trayvon Martin* incident could just have easily had happened in their state (Beam). One such legislator was Senator Ford. His aim was to get rid of the "stand your ground" provision that allows a person who is not engaged in illegal activity and he is attacked in a place where he has the right to stand his ground. He offered South Carolina citizens this advice, "'If you're outside your home, call the police, please," the senator said. "And if you've got to run, run" (Largen). He introduced his idea in the form of 2012's S.B. 1415 to eliminate the "stand your ground" provision. The bill failed to make it even past the Senate (S.B. 1415). Rep. Sellers tried the same thing with H.B. 5072 and experienced the same result, failure (H.B.5072). The law has remained untouched since its 2006 passage.

Similar legislation proposing the expansion of gun rights would be seen in this state as other states. For example, 2013's H.B. 3072 proposed that businesses and public and private employers be prohibited from establishing a policy that prevents people from being able to store a firearm or ammunition in their vehicles. Another proposal was 2013's S.B. 308 which would allow the carrying of a concealed weapon in a business that sells alcohol unless the business has a posted notice that weapons are not allowed. Another proposal was 2007's H.B. 3964, which proposed that a concealed weapons permit holder be allowed to carry his weapon onto any public educational institution's property. All of these bills failed to pass but continue to be re-introduced (H.B. 3072; S.B. 308; H.B. 3964). One success was 2007's H.B. 3310, which allows a concealed weapon permit holder to carry around his weapon in his vehicle (H.B. 3310).

CHAPTER 8: NORTH CAROLINA

Prior to “Stand Your Ground”

Historically, North Carolina has taken a unique stance on the issue of no duty to retreat versus the duty to retreat. Whether than advocating one over the other, North Carolina based the application of each on the intent of the attacker. The North Carolina Supreme Court set the rule of law for this in *State of North Carolina v. Dixon*, 75 N.C. 275, 1876 WL 2790 (1876) by stating:

A distinction which seems reasonable and is supported by authority, is taken between assaults with felonious intent and assaults without felonious intent. In the latter the person assaulted may not stand his ground and kill his adversary, if there is any way of escape open to him, though he is allowed to repel force by force, and give blow for blow. In this class of cases, where there is no deadly purpose, the doctrine of the books applies, that one cannot justify the killing of the other, though apparently in self-defence, unless he first “retreat to the wall.” In the former class, where the attack is made with murderous intent, the person attacked is under no obligation to fly; he may stand his ground and kill his adversary, if need be. (N.C. 275, 1876 WL 2790 at *4)

The court makes the distinction that one has to retreat if not attacked with felonious intent but does not have to retreat if he is attacked with felonious intent. This rule of law would be affirmed in later decisions. For example, in *State of North Carolina v. Kennedy*, 91 N.C. 572, 1884 WL 2038 (1884), the court said:

It is certainly true, as a general rule, that where one is attacked by another who intends to murder him, he may, if need be, kill the assailant, and he would in such case be justified,

and where the attack is made with murderous intent, the person attacked is not bound to flee, but he may stand and kill his adversary if need be. . . But this rule does not apply in cases where the attack is a mere assault. In such case, the person assaulted shall not stand and kill his adversary, if there be a way of escape for him, but he may be allowed to repel force by force, and give blow for blow. (91 N.C. 572, 1884 WL 2038 at *3).

This case is also important because it sounds some light on what one needs for a successful plea of self-defense: “The jury must be satisfied that, unless he had killed the assailant, he was in imminent and manifest danger, either of losing his own life, or suffering enormous bodily harm” (91 N.C. 572, 1884 WL 2038 at *3). This opinion hints at the idea of necessity. The North Carolina Supreme Court would elaborate on this point in *State of North Carolina v. Blevins*,¹³⁸ N.C. 668 (1905), by saying:

It has been established in this state by several well-considered decisions that where a man is without fault, and a murderous assault is made upon him-an assault with intent to kill-he is not required to retreat, but may stand his ground, and if he kill his assailant, and it is necessary to do so in order to save his own life or protect his person from great bodily harm, it is excusable homicide, and will be so held ... this necessity, real or apparent, to be determined by the jury on the facts as they reasonably appeared to him. True, as said in one or two of the decisions, this is a doctrine of rare and dangerous application. To have the benefit of it, the assaulted party must show that he is free from blame in the matter; that the assault upon him was with felonious purpose, and that he took life only when it was necessary to protect himself. It is otherwise in ordinary assaults, even with

deadly weapons. In such case a man is required to withdraw if he can do so, and to retreat as far as consistent with his own safety. (138 N.C. at 670)

This ruling added necessity to the self-defense equation and placed a heavy burden on defendants. The use of the phrase “this necessity, real or apparent, to be determined by the jury on the facts as they reasonably appeared to him” indicates that the court was applying the reasonable person standard. The defendant had to show he played no role in the initiation of the confrontation, the attacker had the intent to kill him, and his killing his attacker was necessary to save his own life or avoid grave bodily harm. To illustrate how this would play out in court the reader’s attention needs to be directed toward the previously mentioned *Kennedy*. In this case, the attacker felt that the defendant was being too friendly with his wife. He followed him into an open field and threw a brick at him; it missed. The defendant warned him to stay away numerous times and then shot and killed him. The jury found that this was manslaughter, not self-defense, and the North Carolina Supreme Court agreed (91 N.C. 572, 1884 WL 2038 at *1) . In applying the elements to this case, the court felt that the defendant fulfilled the requirement of not starting the altercation. However, the court felt that he did not meet the other two requirements of necessity and the attacker having the intent to kill. In determining necessity, the court considered the fact that they were in a wide open field and the defendant could have walked away. Also, the defendant had a pistol and had the advantage in the situation compared to the attacker’s brick (91 N.C. 572, 1884 WL 2038 at *1) . It did not feel that his back was truly to the wall and absolutely had to kill to save his life. In regards to the intent to kill, the court considered how the attacker only threw one mis-directed brick and there was no evidence to show that he was going to continue the altercation (91 N.C. 572, 1884 WL 2038 at *1). By the court’s line of reasoning, it

can be inferred that if he wanted to kill he would have continued to throw more bricks. The cases mentioned thus far would set the standard for how self-defense cases would be decided in North Carolina prior to its 2011 passage of “Stand Your Ground.” These principles would remain in the province of the judiciary for the majority of North Carolina’s history because the legislature did not pass a statute concerning the duty to retreat or no duty to retreat outside the home until “Stand Your Ground.”

North Carolina has adhered to the castle doctrine for over a century. In one of the earliest recorded castle doctrine cases, *State of North Carolina v. Harman*, 78 N.C. 515, 1878 WL 2386 (1878), the North Carolina Supreme Court gave this ruling:

If upon the prisoner's entering his house and being assailed by the deceased with a knife, he entered into a fight with the deceased and stood not entirely on the defensive, and in the fight slew the deceased, it would be manslaughter at the most. But if the prisoner stood entirely on the defensive and would not have fought but for the attack, and the attack threatened death or great bodily harm, and he killed to save himself, then it was excusable homicide, although the prisoner did not turn and flee out of his house. For, being in his own house, he was not obliged to flee, but had the right to repel force with force, and to increase his force, so as not only to resist, but to overcome the assault. (78 N.C. 515, 1878 WL 2386 at *3)

The North Carolina Supreme Court disagreed with the trial judge saying, “that the prisoner could not be excused unless he retreated to the wall, even if deceased assaulted him with a deadly weapon in his own house” (78 N.C. 515, 1878 WL 2386 at *2). With this ruling, the court had given a man’s home a special status and made the duty to retreat inapplicable in it. Subsequent

decisions would concur with this principle. For example, in *State of North Carolina v. Roddey*, 14 S.E.2d 526 (1942), the North Carolina Supreme Court said, “Ordinarily, when a person, who is free from fault in bringing on a difficulty, is attacked in his own dwelling or home, the law imposes upon him no duty to retreat before he can justify fighting in self defense” (14 S.E.2d at 528). The court also made it clear in *State of North Carolina v. Bryson*, 156 S.E. 143 (1930), that the felonious or murderous intent element was not required in attacks that occur in the home by ruling: “The defendant being in his own home and acting in defense of himself, his family and his habitation-the deceased having called him from his sleep in the middle of the night-was not required to retreat regardless of the character of the assault” (156 S.E. at 144). It should be noted the castle doctrine was not an automatic license to kill. The court in *Bryson* would go on to say that, “This, however [not having to retreat when attacked in his home], would not excuse the defendant if he employed excessive force in repelling the attack” (156 S.E. at 144). The court illustrated this point more in *State of North Carolina v. Robinson*, 125 S.E. 617 (1924), by saying, “One is permitted to kill in self-defense but, in the exercise of this right of self-defense, more force must not be used than is reasonably necessary under the circumstances, and if excessive force or unnecessary violence be used, the defendant would be guilty of manslaughter. . . but the question of excessive force was to be determined by the jury” (125 S.E. 617 at 619). The court was applying the reasonable person standard to castle doctrine cases. The rules of law would form the basis for 1993’s N. C. G. S. § 14-51.1. This statute was North Carolina’s first and only statute concerning self-defense, although it was only limited to the home. It would remain unchanged from 1993 to 2011 until it was repealed by the passage “Stand Your Ground” (Orr).

Road to “Stand Your Ground”

In 2011, the question of adopting “Stand Your Ground” was introduced in the North Carolina legislature. Sources are unclear as to how this happened. It could have been due to an NRA influence or the fact that at this point in time many of North Carolina’s southern neighbors had adopted “Stand Your Ground.” The same division seen in the other jurisdictions discussed also existed in North Carolina. They were those who felt that the bill was necessary to protect for citizens’ safety and freedom. For example, Sen. Newton said, "So often citizens are faced with these threats to their lives, and they really shouldn't have to second-guess themselves and worrying about whether they're going to be prosecuted" (“Castle Doctrine Headed to Senate”) Concurring with him, Rep. Brown said, “I’m always going to be for the good, law-abiding citizen who is defending themselves” (Binker). Others felt that the bill could have dangerous consequences. For instance, Sen. Blue wondered questioned the bill’s broad wording and said “Why does the bill include the presumption of deadly force for people living or working inside a tent. They could include homeless people or a street vendor who fires a weapon when there’s a dustup with customers waiting in line” (Robertson). Also, Roxane Kolar , executive director for North Carolinians Against Gun Violence, said the bill would “encourage recklessness and protect those who act recklessly” (Binker). Regardless of this division, H.B. 650, North Carolina’s “Stand Your Ground” bill, was introduced to the House in April of 2011. After two months, it would win over the House in an eighty to thirty-nine victory, a much smaller margin than seen in other states (H.B. 650) . It would have a smoother passage in the Senate on a thirty-seven to nine vote (H.B. 650). The governor would sign it into law and it would go into effect December 2011 (H.B. 650).

Comparison to Florida's "Stand Your Ground" Statute

For the most, Florida's "Stand Your Ground" and North Carolina's "Stand Your Ground" are quite similar except some notable distinctions. To begin, Florida's § 776.013 (3) and North Carolina's § 14- 51.3 (a) relieve a person of the duty to retreat if he is attacked in a place where he has the legal right to be and allows him to stand his ground and kill if "[h]e or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another" (North Carolina's § 14- 51.3 (a) (1)). An interesting distinction is that Florida's § 776.013 (3) adds that the requirement that the defender cannot be engaged in unlawful activity. The closest that North Carolina gets to matching this requirement is N.C.G.S. § 14- 51.4 (1) which will not relieve a defender of the duty to retreat if the defender "was attempting to commit, committing, or escaping after the commission of a felony." Florida's "unlawful activity" is a catch all term that includes both misdemeanors and felonies. In contrast, North Carolina is limited to felonies.

Another area to note is how the jurisdictions deal with the presumption of reasonableness. North Carolina's § 14-51.2 (b) (1) – (2) and Florida's § 776.013 (1) (a) – (b) set out the same requirements for this presumption to apply: the person who the defender used force against was "in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered" a list of locations or was trying to remove or already removed another against his wishes from a list of specified locations and the defender had knowledge of or reason to believe that the act was occurring or had occurred. These statutes have slightly different lists for locations in which the presumption applies. Florida's § 776.013 (1) (a) applies the presumption to dwellings, residences, and occupied buildings. North Carolina's § 14-51.2 (b) (1) includes a home, motor

vehicle, and the most deviating location from Florida, the workplace. North Carolina's § 14-51.2 (c) (1) – (5) and Florida's § 776.013 (2) (a) – (d) list the situations in which the presumption would be inapplicable. Some similarities are that if the defender uses force against a lawful resident of the listed locations who does not have some type of court order like an injunction preventing him from being in the locations, the defender uses force against the legal guardian of someone like a child that is attempted to be removed from the list of certain locations, and the defender uses force against a lawful enforcement officer who identified himself according to the law and the defender knew or should have known that it was a law enforcement officer acting within the scope of his duties. These jurisdictions have some distinct differences in their exceptions. For example, while Florida's § 776.013 (2) (d) does not allow the presumption to be allowed if the force is used against law enforcement officers, North Carolina's § 14-51.2 (c) (4) includes bail bondsmen along with law enforcement officers. Another distinction revolves around Florida's use of "unlawful activity" once again. Florida's § 776.013 (2) (d) precludes the presumption from applying if the defender is involved in unlawful activity or is the list of locations (dwelling, residence, or occupied vehicles). On the other hand, North Carolina's § 14-51.2 (c) (3) makes the presumption inapplicable when "The person who uses defensive force is engaged in, attempting to escape from, or using the home, motor vehicle, or workplace to further any criminal offense that involves the use or threat of physical force or violence against any individual." Once again Florida has used the term unlawful activity as an umbrella term that could apply to any offense, while North Carolina has chosen to narrow its scope on offenses involving threats or violence. Another deviation is North Carolina's § 14-51.2 (5) states that presumption does not apply when, "The person against whom the defensive force is used (i) has

discontinued all efforts to unlawfully and forcefully enter the home, motor vehicle, or workplace and (ii) has exited the home, motor vehicle, or workplace.” Florida has no equivalent to this provision.

Other topics for discussion are how the jurisdictions handle the presumption in relation to the attacker’s intent, immunity, and guidelines for officers investigating these cases. In regards to the presumption relating to the attacker’s intent, both Florida’s § 776.013 (4) and North Carolina’s § 14-51.2 (5) (d) both state that “a person who unlawfully enters and by force enters or attempts to enter a person’s ... [list of specific locations] is presumed to be doing so with the intent to commit an unlawful act involving force or violence.” In Florida, the locations are dwellings, residences, and occupied vehicles, and in North Carolina, they are homes, workplaces, and motor vehicles. The jurisdictions also handle immunity in the same fashion. North Carolina’s § 14-51.2 (5) (e) and § 14-51.3 (2) (b) and Florida’s § 776.032 (1) both grant civil and criminal immunity to those who use lawful force in self-defense. While Florida’s § 776.032 (1) applies to force used in all locations and defense of a person, North Carolina’s § 14-51.2 (5) (e) covers force used in homes, workplaces, and motor vehicles and § 14-51.3 (2) (b) covers force used in defense of a person. The jurisdictions handle the exception for obtaining immunity a little differently. In both jurisdictions, immunity is inapplicable if force is used against a law enforcement officer who identifies himself according to the law and the defender knew or reasonably should have known that he was an officer acting within the scope of his duties. One difference is that North Carolina’s § 14-51.2 (5) (e) and § 14-51.3 (2) (b) include bailsmen as well. The last notable area is recommendations to law enforcement in how to handle these cases.

Florida's § 776.032 (2) states, "A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (1), but the agency may not arrest the person for using force unless it determines that there is probable cause that the force that was used was unlawful." North Carolina has no equivalent to this provision. Although North Carolina has noticeable differences, its main components can be seen in Florida's "Stand Your Ground." North Carolina added in elements that it thought was important.

Aftermath of "Stand Your Ground"

Proposed Legislation

The *Trayvon Martin* incident caught the attention of North Carolina's legislators. The incident would lead to the proposal of 2012's H.B. 1192 and 2013's H.B. 976. 2012's H.B. 1192 proposed for the deletion of North Carolina's "Stand Your Ground" law and wanted to supplant it with a new self-defense statute that only pertained to the home. The bill was introduced on May 29, 2012 and no further action was taken on it from May 30, 2012 (H.B. 1192). H.B. 976 proposed numerous things. The most important one is the elimination of "Stand Your Ground" from North Carolina's statutes and replacing it with a section that only pertains to defense in the home, similar to H.B. 1192. The other provisions were aimed at firearms. For example, it also proposed universal background checks for the private transfer of firearms, required firearm owners who reside with minors to securely lock up their firearms in a storage device or make it unable to be fired when the firearms are not in their immediate possession, and required them to report a missing firearm within forty-eight hours after discovering that it is missing. The bill was first introduced in April 2013 and has yet to pass the House (H.B. 976).

Despite, some legislators attempts at changes, North Carolina's "Stand Your Ground" has remained since it was adopted .

Much like the other jurisdictions in this study, North Carolina has seen its fair share of legislation aimed at expanding gun rights. For example, 2013's H.B. 49 prohibited employers from enforcing a rule that does not allow employees to store their firearms or ammunition in their vehicles. This is important to consider in conjunction with the fact that North Carolina's "Stand Your Ground" law applies the presumption of reasonableness to workplaces. Allowing employees to have guns in the workplace would strengthen this provision. Another proposal was 2013's S.B. 146. It proposed that concealed handgun permit holders be allowed to carry their weapons in a place of worship or on school grounds. All of these bills failed to make it past the Senate (H.B. 49; S.B. 146). One bill did pass however, H.B. 937. It allows faculty at public universities and colleges to keep their weapons locked inside their vehicles in the institution's parking lot. This became a law on July 29th, 2013 with the signature of the governor (H.B. 937).

CHAPTER 9: THE CULTURE OF HONOR

Laws are not passed in a vacuum. They tend to be subject to political, social, or cultural factors at work. The “Culture of Honor” theory offers a cultural factor to explain the popularity of the “Stand Your Ground” law among southern states. This theory was first introduced in the 1990’s by Psychologists Richard E. Nisbett and Dov Cohen in 1996’s *Culture of Honor: The Psychology of Violence in the South* and later re-examined by Sociologist Malcolm Gladwell in 2009’s *Outliers: The Story of Success*. The theory seeks to explain why historically the South’s culture has been more accepting of violence as a method of conflict resolution more than the North’s culture. For example, in the 1800s, using self-defense as justification or excuse for homicide was accepted by the majority of the South, resulting in acquittals for homicides that would likely have been considered cold-blooded murder in the North (Catafalmo 506). The theory points to the South having a “culture of honor” as the reason behind the divergent views of the regions.

A “culture of honor” is not unique to the South. There are “cultures of honor” in countries all over the world, from a Greek Shepherd to an East African warrior (Cohen and Nisbett 7). While “cultures of honor” differ in locations, they share some common characteristics. The first and most important one is that people in these cultures are willing to use violence to defend their reputation or “honor.” This is not the honor that is associated with being honest or having integrity. This honor is based on a “man’s strength and power to enforce his will on others” (Cohen and Nisbett 4). Another characteristic of these cultures is “a man’s reputation is at the center of his livelihood and self-worth” (Gladwell 16). The third characteristic is that these cultures are likely to develop when “the individual is at economic risk

from his fellows and the state is too weak or nonexistent and thus cannot prevent or punish theft of property” (Cohen and Nisbett 4). While all of these characteristics do not fit the South of today, they accurately characterize one of the South’s ancestors: the Scotch-Irish.

Over in Europe, this group was considered to be the fringes of Britain society and lived in Ireland, Scotland, and Wales (Cohen and Nisbett 4). The regions where they stayed were characterized with constant violence and lawlessness. The geography of the region also played an important role. These regions were rocky and marginally fertile, so farming was out of the question. The Scotch-Irish turned to herding animals to make a living (Gladwell 167). Their well-being and their families’ well-being depended on herding. The herdsmen had to protect his herd. The loss of any member could mean ruin. Because of this, he had to be aggressive to show that he was not weak (Gladwell 166). He had to display through his actions and deeds that he was willing to fight in response to any challenge of his reputation (Gladwell 167). Remember that in these regions there was no court for a herdsmen to sue in or police for him to call, if someone stole one of his animals. A good reputation for being a fighter or a “man of honor” was his only protection against such thievery. A man that turned the other cheek was unlikely to survive in this environment. Other men would take his passiveness for weakness and it would not be too long before his herd was gone. Reputation and honor were the focal points of this society. In contrast, farmers did not have to worry about their livelihoods being stolen because crops are not easily stolen. A thief could attempt to steal crops but it would be impracticable and time consuming to go through the harvesting process to steal someone else’s crops (Gladwell 166). This is part of the reason why “cultures of honors” are generally not found in farming

populations. The North was founded by farmers, such as the Puritans, Quakers, Dutch, and Germans (Cohen and Nisbet 7). Whereas, the Scotch-Irish drifted to Southern states.

Their first major period of migration was 1717- 1718, in which about 500 immigrants came over to America (Jackson 45). By the end of the colonial period, approximately 250,000 of them had migrated to America (Jackson 92). Five of the eight states in this study are some of their popular destinations: Tennessee, North Carolina, South Carolina, Alabama, and Mississippi (Gladwell 167).

They migrated to areas that had similar characteristics as their previous homes: remote, lawless, rocky, and marginally fertile (Gladwell 167- 168). These areas allowed them to replicate their ways of life from their old homes in America. For example, Historians Forrest McDonald and Gregory McWhiney wrote that, the Scotch- Irish had brought to the New World with them the practice of herding hogs. They claim that from 1715 to 1837, "the hog was king" (Jackson 90). In fact, "sometimes the hog numbered as many as 1,000 per mile as they moved out of North Carolina. . . ." (Jackson 90). Herding was not the only custom that the Scotch-Irish brought over from their homes. The ideals of the Scotch-Irish's "culture of honor" also sprung up. According to former Senator and author James Webb, in their culture, "Success itself was usually defined in personal reputation rather than worldly goods" (180). Because they chose to settle in remote frontiers, they had to take the law in their own hands once again. Men still had to defend their honor against any insult to protect their livelihoods. Gladwell offers this mentality as an explanation for the trends of the South's criminality. According to him, the South's murder rate is higher than the rest of the country, "[b]ut property and stranger crimes are lower" (169). He goes on to quote Sociologist John Shelton Reed, "The homicides that the South seems to

specialize are those in someone is being killed by someone he (or often she) knows, for reasons both killer and victim understand” (Gladwell 169). It is about fighting over one’s honor (Gladwell 169).

Psychologists Cohen and Nisbett were interested to see how this culture of honor had impacted the actions and responses of Southerners in the 1990s, the time period at the time of their study. They conducted different experiments on forty-two northern and forty-one southern male students at the University of Michigan to see how they would respond to different stimuli. In the “bump experiment”, the subjects were required to fill out a questionnaire and turn it in at the end of a hall. On the way to the turn in the questionnaire, a participant, that the subjects did not know was a part of the experiment, would bump into the subjects and call them “assholes.” There was a control group whose members turned in their questionnaires without being bumped. To examine physiological reactions to the insult, the participants cortisol and testosterone levels were measured. The former is a “hormone associated with high levels of stress, anxiety, and arousal in humans and in animals” Cohen and Nisbett 45). In accordance with the “Culture of Honor” theory, southerners should have been more upset by the insult show a rise in cortisol levels when compared to the control group. Northerners on the other hand, should have been minimally affected by the insult and should have shown little or no rise in cortisol levels when compared to the control group. In regards to testosterone , it is related to aggression and dominant behavior. Cohen and Nisbett hypothesized that, “If southerners respond to the insult as a challenge and are preparing themselves for future aggression or dominance contests, we would expect a testosterone increase after the bump. If northerners are relatively unaffected, we would not expect their testosterone levels to rise very much” (46). Cortisol and testosterone levels

were tested before and after the bump. Cortisol levels rose 79% for insulted southerners and 42% for control southerners. As for their northern counterparts, “the levels rose 33% for insulted northerners and 39% for control northerners” (47). As predicted, the insulted southerners showed the largest increase in cortisol levels. The same would be true for testosterone levels. They increased 12% for insulted southerners and 4% for control southerners. The insulted northerners increased 6% and the control northerners increased 4% (Cohen and Nisbett 48).

In another experiment, the subjects unknowingly played a game of chicken after the “bump experiment.” The subjects were sent to walk down the hall once again, but this time another participant would walk directly toward them. Tables were arranged in the hallway so that there was no space for the both the participant and subject to walk by each other; one would have to step aside to avoid a collision. The researchers expected the insulted southerner to have an aggressive approach to the challenge and go farther toward the participant before moving to avoid a collision (Cohen and Nisbett 49). This prediction proved to be correct. The insulted southerners waited until they got about three feet away from the participant before “chickening out”. Whereas the control southerners chickened out at about nine feet (Cohen and Nisbett 49) . The control and insulted northerners “chickened out” at about the same distance, so the insult did not have much of an affect on the northerners’ behavior (Cohen and Nisbett 49).

In another interesting experiment, the researchers gave the subjects a narrative in which their fiancé told them about another man was making passes at her. The other man then tried to kiss the fiancé. The researchers asked the subjects to fill in the rest of the story. 75% of insulted southerners completed the narrative with an ending involving them injuring or threaten to injure the other man(Cohen and Nisbett 49) . Only 20% of the control southerners had this response.

With the northerners the opposite happened. 55% control northerners gave a response involving threat or violence ,while only 41% of insulted northerners responded completed the scenario with such an ending (Cohen and Nisbett 49). Once again the insult is shown not to have much of an influence on the northerners. Cohen and Nisbett used the findings to draw this conclusion about why violence as a response to an insult is more common in the South than the North:

It is not just that southerners have attitudes that are more approving of violence to an insult *in the abstract*. The insulted southerner feels his reputation threatened , he becomes angry, and is cognitively and physiologically prepared for aggression. The insult is a matter about which something must be done , and aggressive or domineering behavior toward offenders (or even bystanders) is required. (Cohen and Nisbett 52)

Cohen and Nisbett warn that this conclusion was an extrapolation based on a small sample. However, Gladwell points out some interesting characteristics about this sample. None of them were herdsmen, none of their parents were herdsmen, unlike the Scotch-Irish. The median income for northerners was \$85,000 and for southerners \$95,000. In fact, some of their parents were CEOs of companies like Coca-Cola. They did not face poverty like the Scotch-Irish. Also, they were living in the 1990s at the time and attending a university not living in colonial times on the lawless frontier like the Scotch-Irish. The features that helped to produce a “culture of honor” in the Scotch-Irish were not present in the study’s sample. It seems quite peculiar how the southerners’ circumstances were so different from the Scotch-Irish of the past but they reacted in a similar fashion like the Scotch-Irish would have after the bump and other insults in the experiments (Gladwell 174). The reader may wonder how can the culture of honor be alive

and well under such different circumstances. Gladwell answers this question by looking at the “Culture of Honor” as a cultural legacy:

Cultural legacies are powerful forces. They have deep roots and long lives. They persist generation after generation virtually intact, even as the economic and social and demographic conditions have vanished, and they play such a role in directing attitudes and behavior that we cannot make of our world without them. (175)

In relation to self-defense, the duty to retreat is incompatible with the South’s culture of honor. One who retreated would have a poor reputation and would be perceived as weak by the rest of the society. “Stand Your Ground” is a natural fit for the South’s culture of honor. For example, “[t]he right to stand one’s ground flows from notions of honor, chivalry, and the right to freedom from attack and violation entrenched in Southern society” (Catafalmo 505). It might not be a coincidence that five of the eight states in this study had a significant Scotch- Irish population at one point and/or the Scotch-Irish had a role in settling them. Their transmission of the culture of honor could have turned these states into fertile grounds for the “Stand Your Ground” law to flourish.

CHAPTER 10: AN ARGUMENT FOR REVISIONS TO LAW TODAY

In comparison to other jurisdictions, no state has exceeded the broadness of Florida's "Stand Your Ground" law, in terms of the protections and subject areas that it covers. While states have used Florida as a guide, they have been careful to not make their statutes as strong as Florida's, for example, not all of the jurisdictions offer both civil and criminal immunity. Almost half of the jurisdictions in this study offer only civil immunity. In essence, Florida created the "incredible hulk" of "Stand Your Ground" laws. It is possible that the issues that Florida has been plagued with in relation to "Stand Your Ground" is because of the law's strength, while the other jurisdictions have remained relatively unscathed. The earlier mentioned criticisms that Florida's "Stand Your Ground" law has faced, such as ambiguity in the term "unlawful activity", the presumption of reasonableness, the application of civil and criminal immunity, and law enforcement's application of the law, have yet to be addressed by the Florida legislature. Critics of "Stand Your Ground" have advocated the elimination of the statute altogether. This is not a feasible solution. In all of the jurisdictions in this study, this course of action has been met by defeat. Instead of going for the jugular and getting rid of "Stand Your Ground," Florida legislatures should look at what legislatures have done in other jurisdictions have done to adjust "Stand Your Ground" to accommodate their needs and take them under consideration when evaluating Florida's law.

One example is how different jurisdictions have chosen to handle the granting of immunity. Florida's statute is broad when compared to other jurisdictions because it covers both civil and criminal immunity. The legislature has quite a few options when it comes to this. It can take the Georgia approach by only allowing criminal immunity. There is also the Mississippi

approach where the defendant receives civil immunity after being found not guilty in a criminal trial. The issue with these two approaches is that the Florida legislature has been very adamant about the statute granting both kinds of immunity and avoiding citizens having to go through a trial. A more likely candidate is the Tennessee approach. Tennessee only grants civil immunity. However, it has some restrictions in regards to civil immunity. The defender is not granted civil immunity if he hurts an innocent bystander or damages someone's property who was not involved in the attack. This approach would not only protect a victim from the attacker or the attacker's family suing but would also allow reparations for citizens caught in the crossfire. Why should a citizen be penalized for being in the wrong place at the wrong time? This approach was suggested to the Florida legislature after Jenkins incident, in which a young Miami girl was murdered in the crossfire of rival gang member, and voted down. The researcher believes that it should be reconsidered. A possible revision to it is that only the attacker or initial aggressor can be held responsible for injuries to bystanders and property damages, while the person using lawful self-defense would be granted civil and criminal immunity. Another area where Florida can look to other jurisdictions is the provision regarding officers using "standard procedures" to investigate these cases and not making an arrest unless there is probable cause. Because of the complexity of these cases, probable case is difficult to obtain and as mentioned before the vagueness of the phrase "unlawful activity" has caused officers across Florida to proceed with these cases in different and contradicting manners. The Florida legislature could take the approach that the majority of the states in this study, like North Carolina, have taken and not have this provision. Another approach is the Louisiana approach in which officers are authorized to conduct a full investigation if a death occurs under suspicious circumstances. The

Florida legislature has been hesitant to make any revisions to “Stand Your Ground” since its inception and these approaches seem to extreme. The researcher’s recommended approach is Florida legislatures working with officers to delineate what the standard procedures for these cases should be. Because of the complexity of these cases, there should be a special type of protocol for them. A third area in which the Florida legislature should consider looking at what other jurisdictions has done is the use of “unlawful activity.” Except for North Carolina, all the states in this study have adopted this term. An issue with this term is that unlawful activity could apply to any crime. For example, someone could be smoking marijuana outside and is attacked by a stranger. Should his smoking of marijuana, a misdemeanor, preclude from receiving the protections of “Stand Your Ground?” North Carolina helps to clear up this gray area by only preventing those who are engaged in a felony from “Stand Your Ground’s” protections. The Florida legislature should take this approach under consideration.

CHAPTER 11: SUMMARY

Comparing the Other States to Florida

Table 5: Comparing Other States to Florida

	“Duty to Retreat” or “No Duty to Retreat” before 2005	Grants Civil and Criminal Immunity	Authorizes Officers to use “standard procedures”	Same Locations for the Presumption of reasonableness as FL	Presumption of trespasser’s criminal intent	Same Requirements as FL for presumption of reasonableness to apply	Same Exclusions as FL for presumption of reasonableness
Alabama	Duty to Retreat, via case law and statutory law	Yes	Yes	Yes, but adds nuclear powerplants	No	Yes, but adds 3 more	Yes
Georgia	No Duty to Retreat via case law	Only civil immunity	No	No	No	No	No
N. Carolina	Took a different approach. Duty to retreat applied when attack was not made with felonious intent	Yes		Yes, but adds workplace	Yes	Yes	Yes, but adds bailbondsmen and a fleeing person

	“Duty to Retreat” or “No Duty to Retreat” before 2005	Grants Civil and Criminal Immunity	Authorizes Officers to use “standard procedures”	Same Locations for the Presumption of reasonableness as FL	Presumption of trespasser’s criminal intent	Same Requirements as FL for presumption of reasonableness to apply	Same Exclusions as FL for presumption of reasonableness
S. Carolina	Duty to Retreat via case law	Yes, but SC narrows its application to only the use of deadly force	Yes	Yes	Yes, and adds requirement concerning lawful resident violating restraining order and other legal restrictions	Yes	No, missing FL’s requirement about force being used against lawful resident with a restraining order against him/ her
Mississippi	No Duty to Retreat via case law	Yes, but must be found not guilty first to receive civil immunity	No	Yes, but added businesses and place of employments	No	Yes	No, missing three exclusions
Tennessee	Changed from Duty to Retreat to No Duty To Retreat via statutory law in 1989	Only civil immunity but does not apply to innocent bystanders and property damages	No	Yes, but had this prior to Florida; however, Tenn. did adopt Florida’s list and added businesses to it	No	No, missing requirement about removing from vehicle, residence, or dwelling	Yes
Louisiana	Middle Ground Approach. Citizens had to retreat if reasonable.	Only civil immunity	No, authorizes officers to conduct a full investigation if death occurs from violence or suspicious circumstances	Yes, but added businesses to it	No	No, missing the requirement of attacker removing to attempting to remove someone	No, missing exclusions concerning force used against officers and attacking someone who has right to be there

The above chart lists the non-Florida jurisdictions in this study and see how they compare with Florida’s “Stand Your Ground” elements. The first column lists where the jurisdictions

stood on the issue of duty to retreat versus no duty to retreat prior to Florida's passage of "Stand Your Ground." Two of these jurisdictions, Alabama and South Carolina, imposed the duty to retreat. Two other jurisdictions took different approaches, Louisiana and North Carolina. Because of the uniqueness of their approaches, the researcher did not feel that it was adequate to put them in either the duty to retreat or no duty to retreat category. For example, in North Carolina, the duty to retreat depended on if the attack was made with felonious intent. This is not seen in any other jurisdiction in this study. Three states, Mississippi, Tennessee, and Georgia were no duty to retreat jurisdictions prior to Florida's passage of "Stand Your Ground." Mississippi and Georgia had been this way for over a century via case law. After Florida's passage "Stand Your Ground," their legislatures felt the need to codify this. Tennessee is an anomaly in that it statutorily abolished the duty to retreat in 1989.

Florida's "Stand Your Ground" served as the boilerplate for most of these jurisdictions to construct their statutes. The above chart illustrates how many of the jurisdictions have the same elements found in Florida's "Stand Your Ground", added some of their own provisions, and/or did not include certain elements. Commonalties among the jurisdictions are eliminating the duty to retreat for someone who is not engaged in unlawful activity and is in a place where he has the legal right to be, the granting of immunity, applying the presumption of reasonable to certain locations, and the requirements and exclusions for the presumption of reasonableness. There are some variations among these commonalties. For example, the elimination of the duty to retreat for someone who is not engaged in unlawful activity and is in a place where he has the legal right to be is uniform in each the states except for North Carolina, which restricts it to someone not engaged in a felony. Another area is the granting of immunity. While the states all

grant civil immunity, Louisiana, Tennessee, Mississippi, and Georgia do not also grant criminal immunity. In the application of the presumption of reasonableness in certain locations, in addition to the locations that Florida has, four states, Louisiana, Tennessee, Mississippi, and North Carolina, have included businesses and/or places of employment. South Carolina has the exact same locations as Florida. Alabama includes the unique federally licensed nuclear plants in its list. As for the requirements for the presumption of reasonableness, only Alabama, North Carolina, and Mississippi have adopted all of Florida's requirements, with Alabama adding three of its own. In contrast, Tennessee and Louisiana only took a few of Florida's requirements. Whereas, Florida has all of their requirements, they do not have all of Florida's. In regards to the exclusions, Alabama, North Carolina, and Tennessee have adopted all of Florida's exclusions, with North Carolina adding one of its own. Mississippi, Louisiana, and South Carolina are missing some of Florida's exclusions. Florida has all of their exclusions but they do not have all of Florida's.

The areas where the most divergence can be seen is in regards to recommending that officers use standard procedures to investigate "Stand Your Ground" cases and the presumption of a trespasser's intent. Only South Carolina and Alabama have this recommendation to officers. While the majority of the jurisdictions are mute on this point, Louisiana has gone against this recommendation by requiring officers to conduct a full investigation if a death occurs under suspicious circumstances or as a result of violence. In regards to the presumption regarding a trespasser's intent, only North Carolina and South Carolina have adopted a presumption regarding a trespasser's intent. In addition, South Carolina adds another presumption concerning Florida's presumption of trespasser's criminal intent. It presumes that anyone who enters or tries

to enter a dwelling, residence, or occupied vehicle who is “in violation of an order of protection, restraining order, or condition of bond is presumed to be doing so with the intent to commit an unlawful act. . .” (§ 16-11-450 (E)).

Florida has exerted influence on each of these jurisdictions. This influence has not been equal. In Tennessee and Georgia, Florida’s influence was not as strong as the other jurisdictions. With Georgia, it simply added two provisions from Florida’s ”Stand Your Ground” into its already existing statute, the provisions concerning the elimination of the duty to retreat and the granting of civil immunity. It was not a complete or near rewrite like most of the other jurisdictions. The reader should take note of all the no’s that Georgia has in the table. In regards to Tennessee, it was quite progressive when it came to self-defense . While self-defense in the other jurisdictions was largely decided by case law, Tennessee had codified its statute removing the duty to retreat sixteen years before Florida passed “Stand Your Ground.” Also Tennessee, statutorily adopted the presumption of reasonableness over a decade before Florida did; although it was only limited to the home. Tennessee would still take portions of Florida’s statute and merge it with its own. Regardless of these anomalies, the jurisdictions in this study have mostly adopted provisions that are similar to Florida’s and some of the critiques aimed at Florida can be aimed at them as well.

Future of the Law

For the time being “Stand Your Ground” is here to stay. In the majority of the jurisdictions discussed, the law was passed with overwhelming support by the legislatures. Florida, the state where most of the conflicts regarding the law has happened, has chosen to stand by the law and has not made any amendments since its passage, even after the *Martin* incident.

Legislators in other states have deemed incidents, like the one involving *Martin* incident, as anomalies and have not seen the need to change their law based on a peculiar case. In looking at proposals post- “Stand Your Ground”, only one state has had a successful proposal that weakened the law or went in an opposite direction than Florida.: Louisiana. Louisiana amended its law in 2012 by adding the provision that officers must conduct a full investigation if a death occurs under suspicious circumstances or as a result of violence in reaction to the *Martin* incident. Other proposals to either amend or abolish the law have failed. Legislation has been more aimed at strengthening “Stand Your Ground” and other gun laws. The same pieces of legislation can be seen in different jurisdictions. For example, proposals authorizing the carrying of handguns in public parks, post-secondary educational institutions, churches, and prohibiting employers from making rules forbidding an employee from storing a handgun in his vehicle on the company’s property in multiple jurisdictions. Although these proposals have not been successful in all of the jurisdictions in which they proposed, there have been more of them proposed and they have had a better success rate than those proposals aimed at weakening or abolishing the law. This is a strong indicator of the direction that legislators want to take “Stand Your Ground” and gun laws in general.

Comparing Justifiable Homicides

The researcher was only able to obtain justifiable homicide statistics for Florida, Georgia, Tennessee, and South Carolina. For Florida, Georgia, and Tennessee, the researcher was able to obtain the statistics only concerning justifiable homicides committed by private citizens. With South Carolina, justifiable homicides committed by private citizens is lumped together with those committed by police officers. All of these jurisdictions have a similar definition of

justifiable homicides: “the killing of the perpetrator of a serious criminal offense either by a law enforcement officer in the line of duty or by a private citizen, during the commission of a serious criminal offense” (FDLE). In all of these jurisdictions, there is an increase in the average number of justifiable homicides per year from the years immediately preceding the passage of “Stand Your Ground” and the years after. In Florida, the number more than tripled from twelve per year to forty killings per year. In Georgia, it more than doubled from six a year to about thirteen killings a year. In Tennessee, the average increased from 17.5 per year to 21.5 justifiable homicides per year. In South Carolina, the average increased from 10.8 per year to 12.8 killings. It should be noted that because South Carolina’s data include both justifiable homicides committed by private citizens and officers, it cannot be determined how much of a role justifiable homicides committed by private citizens played in the increase. However, it is interesting to note that all these jurisdictions the passage of “Stand Your Ground” is marked by an increase in the number of justifiable homicides. This is not to say that that is “Stand Your Ground” caused the number of justifiable homicides to increase, but there is a correlation between the two. Florida’s increase has probably received the most attention in law review and newspaper articles among the jurisdictions because it is the most dramatic increase.

The Influence of the South’s Culture of Honor

The “Culture of Honor” Theory offers a cultural factor that contributed to the spread of “Stand Your Ground” laws in the South like a wildfire. According to this theory, the South received its culture of honor from the Scotch-Irish, a group that played a role in settling numerous Southern states. Five of which are included in this study: Tennessee, North Carolina, South Carolina, Alabama, and Mississippi. The Scotch-Irish developed a “culture of honor” due

to social and environmental factors in the regions in which they inhabited. Because the land was rocky and marginally fertile, they turned to herding animals. Their herds were their and their families' livelihood. In a culture of honor, members have to use violence to respond to insults or intrusions in order to preserve their reputation of honor. This reputation is a very important in these societies. In the Scotch-Irish society, herdsmen had to have a reputation of honor to survive. If a herdsmen was perceived as weak, other herdsmen would steal from his herd and leave him without a herd and no way to support his family. A herdsmen had to fight intruders to show that he was not weak. Because the areas they lived in were remote and lawless, herdsmen had to take the law into their own hands and protect their herds. Retreating from an attack would be seen as weak and was not compatible with the values of this society. Anyone who wanted a reputation of honor would stand his ground and fight when attacked.

This group would start migrating to America in the 1700s and settled in Southern states. It brought herding and its "culture of honor" with it. This is in contrast to the North which was settled by farmers. Farmers do not have to develop a reputation of honor because it is unlikely that their neighbors would steal their whole field of crops. This could explain why the North was been in favor of the duty to retreat. In the 1990s, Psychologists Nisbett and Cohen, would conduct a series of experiment on forty-two northern and forty-one southern male students at the University of Michigan to see how they would respond to different stimuli. In each experiment the insulted southerners had the most violence and aggressive responses to an insult. This led Nisbett and Cohen to draw this important conclusion:

It is not just that southerners have attitudes that are more approving of violence to an insult *in the abstract*. The insulted southerner feels his reputation threatened , he becomes

angry, and is cognitively and physiologically prepared for aggression. The insult is a matter about which something must be done, and aggressive or domineering behavior toward offenders (or even bystanders) is required. (Cohen and Nisbett 52)

It is interesting that the students were completely different from the Scotch-Irish. For example, they were not herdsmen, did not live in a lawless territory, and came from well-off families. However, the Southerners still reacted like a Scotch-Irishmen would have centuries ago to an insult. It is unlikely that a person that would react in such a way to an insult would agree with the duty to retreat. “Stand Your Ground” seems like a more natural fit for a society where people behave like that. While this theory does offer a plausible explanation to the popularity of “Stand Your Ground” in the South, it does have some holes. For example, the Scotch-Irish played a role in a settling or were once significant portion of the populations of Tennessee, North Carolina, South Carolina, Alabama, and Mississippi. However, Alabama, South Carolina, and Tennessee obeyed the duty to retreat for the majority of their histories. This does not make sense if the South’s culture of honor is as strong as the researchers suggest. While this theory explains why some jurisdictions did not operate under the duty to retreat since their beginnings, like Georgia and Mississippi, it leaves one to wonder why other jurisdictions waited more than a century later to adopt “Stand Your Ground.” The researcher suggests that the NRA played more of a role in the passage of “Stand Your Ground” in recent years than the “culture of honor.” The NRA lobbied heavy in the jurisdictions in this study and used its influence to get it passed. Notice how the NRA chose Florida as its first target. Florida was not settled by the Scotch-Irish and is mainly considered southern because of its location, not because of the cultural characteristics it shares with other Southern states. These factors plus Florida being a strictly duty to retreat state for all

of its history prior to 2005 indicate that Florida was immune to the South's culture of honor. However, the NRA chose it anyway because reputation as a leader in gun policy in the past. A sure indication of the NRA's influence is Florida's former Governor Jeb Bush signing "Stand Your Ground" into law with the ex-president of the NRA by his side. This is not to say that the South's culture of honor did not play a role. The South's culture of honor may have played a role in jurisdictions like Mississippi, Georgia, and Tennessee, already being no duty to retreat via case law or statutory law and making it easy for them to adopt a version of Florida's "Stand Your Ground" law ,because it was in line with their legal principles already. However, in the other jurisdictions in this study who were not definitely no duty to retreat before Florida's passage, Louisiana, Alabama, South Carolina, and North Carolina, Florida's passage and the NRA's lobbying had a stronger influence than the South's culture of honor in converting them. Once Florida passed its law, legislators in the majority of the other jurisdictions would begin to considering adopting their own version of the law and would use Florida as a reason to convince other legislators and their constituents to support the law. Florida's passage gave the law validity in the eyes of other jurisdictions. Florida's passage would give the NRA motivation to push the law in other jurisdictions. The NRA would lobby in other jurisdictions with Florida as its mascot. The combination of the NRA's lobbying and Florida's passage would sway the majority of the jurisdictions in this study.

CHAPTER 12: CONCLUSION

This thesis has added to literature by exploring other “Stand Your Ground” jurisdictions that have been neglected thus far. It accomplished this by examining how Florida, North Carolina, South Carolina, Georgia, Tennessee, Louisiana, and Mississippi handled the issue of self-defense prior to Florida’s 2005 passage. It then looked at what made these jurisdictions decide to adopt “Stand Your Ground” and compared their statutes to Florida’s to see how uniform they were to Florida’s and to judge how influential Florida was to them. The thesis then examined what proposals have been made regarding “Stand Your Ground” and if any amendments have been made since its adoption in the jurisdictions. For four of these jurisdictions, Florida, Georgia, South Carolina, and Tennessee, the researcher was able to obtain figures for the number of justifiable homicides per year in years preceding and following the passage of “Stand Your Ground.” In the latter part of the thesis, it examines the South’s culture of honor as possible examination for the appeal of “Stand Your Ground” in the South.

The thesis uncovered that Florida has the broadest “Stand Your Ground” statute in terms of the issues that it covers and in the protections it offers. For the most part, the other jurisdictions have stayed in line with the formula that Florida first established. Georgia and Tennessee are outliers in that Georgia only added two amendments from the Florida’s statute into its already existing law and Tennessee already had some of the provisions in Florida’s “Stand Your Ground” before Florida did and just merged them with some of Florida’s newer elements. In the four of the jurisdictions that the researcher was able to obtain data on justifiable homicides, Florida, Georgia, and Tennessee showed an increase in the average number of justifiable homicides committed by private citizens between the years preceding the passage of

“Stand Your Ground” and the years after. South Carolina had justifiable homicides committed by private citizens included with those committed by police officers and there was no way to separate them but an increase was seen in this overall number citizens between the years preceding the passage of “Stand Your Ground” and the years after. In looking at the future of “Stand Your Ground”, only Louisiana has been able to make an amendment to its statute. The bulk of legislation has been aimed at strengthening “Stand Your Ground” and other gun laws, with similar legislation showing up in numerous jurisdictions. Because Florida’s law has been the main focus, the researcher suggested that Florida look at what other states have done in their statute as guides for possible revisions. In regards to the South’s culture of honor contributing to the spread of “Stand Your Ground”, it does explain why some states, such as Mississippi, Tennessee, and Georgia, that were already no duty to retreat by case or statutory law easily adopted Florida’s “Stand Your Ground” law. However, for states that were not no duty to retreat before Florida passed “Stand Your Ground”, Florida and the NRA’s influence played more of a role in their adopting their own version of the law.

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