“A person who is not engaged in an unlawful activity and who is attacked (3) 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.”

Justice Oliver Wendell Holmes, Jr. declared in Brown v. United States on May 16th, 1921 in a case that upheld the “no duty to retreat” maxim that “detached reflection cannot be demanded in the presence of an uplifted knife.” In this spirit, in recent years, a growing number of states have passed so-called Castle Doctrine laws protecting a home owner’s right to use deadly force in self defense, without mandating a duty to attempt to retreat first, when the home owner’s life is being...
imminently threatened by an intruder or home invader. These laws are based on the old English common law premise that a person’s home is their castle. These legal protections have been extended in most Castle Doctrine states to one’s place of business or work as well. Enlightened, pro-self defense state legislatures have even gone a step further in passing what are termed Stand Your Ground laws. Florida has been one of the pioneers in this legal arena.

The essence of a stand your ground law is the stipulation that a person (termed “Person A”) may use force including deadly force in self-defense (and only in self defense) against another person (termed “Person B”) in a confrontational situation, in any place that Person A has a right to be, without being obligated to retreat first, if Person A has reasonable grounds to believe that Person B is currently posing an immediate and unavoidable threat of death or grievous bodily harm to Person A or to another person under the mantle of Person A’s protection, in that place. Stand your ground laws do not prescribe deadly force if a lesser level of force can be safely employed by the victim; that is, the person under attack. However, they do acknowledge that it is within the victim’s rights to employ whatever level of force is in fact necessary to preserve his or her life and limb.

In addition to one’s domicile, stand your ground laws stipulate that places where a person has a right to be (where the use of deadly force without a duty to retreat would be justified when the above criteria have been met) include public areas and a motor vehicle. However, the caveat is that Person A must legally have a right to be in those places, and not be trespassing, breaking and entering, or in the midst of the commission of a crime. Since their passage in various states, stand your ground laws have been used in some criminal cases as the basis for a defendant’s defense against criminal charges in legal proceedings.

More than half of the states in the USA have adopted some form of Castle Doctrine, stipulating that a person has no duty to retreat from their home when their home is attacked, or when they are being attacked while in their home. Some of these states have gone one step further, removing the duty of retreat from any location, through the passage of Stand Your Ground legislation. These laws have also been called Line In The Sand and No Duty To Retreat laws.

As long as all the criteria delineated above have been met, these laws stipulate that the victim (Person A), has “no duty to abandon or flee from a place in which he legally has a right to be, or to give up ground to an assailant.” (http://en.wikipedia.org/wiki/Stand-your-ground_law). In summary, these criteria, or requirements, include:

- Person A is not in the midst of the commission of a crime, and ...  
- Person A has a legal right to be in the place where he is being attacked, and ...  
- Person A has in no way started or provoked the confrontation, or instigated or escalated it, and ...  
- Person B is confronting Person A in a manner such that Person A has reasonable grounds to believe that Person B is presenting an immediate and unavoidable threat of death or grave bodily harm to Person A (or another person under Person A’s mantle of protection) as a result of person B’s actions, and ...  
- Person B truly has the ability and immediate opportunity to carry out the grave or deadly threat he is presenting through his words and/or actions at that moment, and ...  
- Person B is currently acting in a manner that puts Person A in jeopardy of his life and limb, and ...  
- If Person A does not defend himself, the likely consequences to him or someone else under his mantle of protection are death or serious bodily injury.

When all of these criteria are met, under the stand your ground laws, Person A has no duty to retreat from anywhere that they are at the time, if they have the right to be there. These types of laws offer legal protections for law abiding people when they act in self defense, in the form of immunity against criminal or civil prosecution in some cases, and in others, in the form of a viable legal defense. In addition, these laws provide deserved legal protection for people with physical infirmities who face a marked disparity in force if thrown, through no fault of their own, into a violent physical confrontation with someone bigger, stronger, or more able bodied with demonstrated intent to cause them physical harm.

Currently, at least 29 states have adopted Castle Doctrine statutes, and some of these states (such as Florida, Utah, and Pennsylvania) have expanded these statutes to include Stand Your Ground law.

Given a recent, much publicized case in Sanford, Florida wherein a 28-year-
old neighborhood watch volunteer on patrol named George Zimmerman claimed self defense in the shooting death of a 17-year-old teenager named Trayvon Martin, Florida’s Stand Your Ground law has come under intense scrutiny and criticism. It is my opinion that there is no problem with the law per se. The law offers guidelines and provides proscriptions, but no specific prescriptions! As with most legal statutes, it is written with enough vagueness such that its applications are left open for interpretation in different situations. However, in my opinion, a big problem does arise when people naively assume that there is a fixed formula for justifying the use of deadly force in any or every violent encounter. As my friend, noted firearms instructor and author, Massad Ayoob (www.MassadAyoobGroup.com), repeatedly emphasizes in his classes and writings, there are general criteria, but every case must be evaluated and ultimately judged based upon the totality of the circumstances that existed at the time that the lethal force in question was employed.

In the remainder of this article, I will quote in italics the key provisions of Florida’s Stand Your Ground Statute, and add my common man (that means not a lawyer!) commentary in regular print.

2011 FLORIDA STATUTES. CHAPTER 776: JUSTIFIABLE USE OF FORCE
http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0776/0776.html

Florida’s Self Defense Act (776.012. Use of force in defense of person) states that “A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other’s imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat if (1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony; or (2) Under those circumstances permitted pursuant to s. 776.013.”

Author’s note. A “forcible felony” would include such crimes as murder, manslaughter, rape, sodomy, arson, robbery, armed robbery, burglary occupied, aggravated assault, a terrorist act, the detonation of an incendiary or explosive device, and kidnapping.

This paragraph removes any duty to retreat, but certainly does not advocate not retreating if one safely can. In every defensive firearms and concealed carry class I teach, I emphasize to my students that one should do everything within one’s power to preclude or avoid a violent or deadly confrontation to the extent that one safely can. However, if one cannot safely preclude or avoid the
confrontation, or its escalation, then one should be prepared to use whatever level of force is necessary (including deadly force if necessary) to survive the confrontation intact—and that means win the fight. The defender's goal is not to cause the death of the aggressor, but rather to stop the aggressor and render him incapable of continuing his deadly attack. Every class I have taken from instructors clearly in the know (such as Massad Ayoob and John Farnam), emphatically has driven this point home.

Section 776.013 of the law states that “(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: (a) The person against whom the defensive force is 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 had removed or was attempting to remove another against 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 entry or unlawful and forcible act was occurring or had occurred.”

This is common sense. Breaking and entering into an occupied dwelling or vehicle leaves one with no reason to believe that the perpetrator has anything but evil and malevolent intent. When you are in a vehicle and someone attempts to carjack you, if you want to continue to live, you have no other choice than to employ extreme violence to neutralize the attack. You are constrained by the boundaries of time and space. On the other hand, when you are in your dwelling, and someone breaks in, this should not be an automatic ticket to shoot first and ask questions later. It does not mean “his rear end is mine!”

In my opinion, the key decisions that must be made right then and there under extreme duress (recall there is no time for “detached reflection”) are: (1) whether you have any safe alternatives to the use of deadly force, and if the answer is “no” because you believe your life and limb (or the lives and limbs of your family members) are in imminent danger, (2) what is the most effective means of neutralizing the threat to your lives.

If one or more criminals attempt to remove you or another person, against your will or their will, from a dwelling, residence, or vehicle, you would be foolish indeed to assume that they are doing it for your own good, or to take you for ice cream. The term for that is kidnapping, and that is a capital crime. If you go along, you are likely to end up dead.

Section 776.013 continued. (2) “The presumption set forth in subsection (1) does not apply if: (a) The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; (b) or 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; or (c) the person who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or (d) the person against whom the defensive force is used is a law enforcement officer, as defined in Section 943.10(14), 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.” This provision is common sense. Its intent is to prevent the escalation of domestic conflict into deadly violence.

STAND YOUR GROUND PROVISION

(3) “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.”

(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.”

So, here we have it. The law is saying that no one has the right to physically assault you! And you have the right to respond to any assault with like force wherever you are. That means you should respond to less than lethal force with less than lethal force if you safely can. However, the law does not place any unreasonable requirement on you to use any lesser or greater level of force than that which is necessary to neutralize the danger to your continued existence.

Yes, we do have the right to use violence to stop violence directed against us. We are not required to submit, to freeze, or to flee and get shot or stabbed in the back. No one has the right to take your life or render you a cripple! However, as I have stated in previous articles (and the reader is referred to the writings of Massad Ayoob on this and all related topics at www.MassadAyoobGroup.com), when you have great power, you also have great responsibility. When you choose to carry the power of life and death on you in the form of a concealed firearm (ergo, a deadly weapon), you assume an awesome responsibility—to aspire to a higher standard of conduct that respects life so much that you are willing to fight in defense of innocent life. We do not shoot to take life, we shoot to save life. This higher standard of conduct includes:

• Avoiding trouble whenever possible, and ...
• Never provoking, escalating, or entering into a confrontation just because you have the false security of knowing you are carrying a gun, and ...
• Using only that level of force that is necessary for you to successfully defend yourself against a physical assault, and ...
• Being prepared to use deadly force when indicated in self defense as a last resort, but also as an immediate response if that is your only option in the face of a violent attack.

Laws in a free society are meant to serve as guidelines for human conduct. They are no substitute for the use of common sense, nor can they legitimately serve as excuses for malfeasance. Furthermore, in a free society, laws cannot prescribe what you should do in complex ambiguous unfolding situations. What they provide are parameters for conduct and they also set limits and boundaries for acceptable behavior. In a free state, people must think for themselves and make choices, and they should be held accountable for their choices. This is in contrast to a police state wherein people are not free to think for themselves or make many choices. In a police state where people are not free, people do not have to think independently, nor are they encouraged to do so. People are just made to obey and comply, or else suffer the dire consequences.

Last but not least, Florida’s self defense law stipulates under Section 776.032: Immunity from criminal prosecution and civil action for justifiable use of force:

(1) “A person who uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer, as defined in s. 943.10(14), who was acting 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 was a law enforcement officer. As used in this subsection, the term ‘criminal prosecution’ includes arresting, detaining in custody, and charging or prosecuting the defendant.”

(2) “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.”

(3) “The court shall award reasonable attorney’s fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (1).”

These provisions protect the law abiding citizen from being unfairly arrested, detained, and prosecuted for justifiably exercising their rights to self defense. These are things we should expect in a free society. Be wary of politicos who claim they stand for freedom and democracy, but in publicly commenting on self defense cases, make emotion based appeals to their followers to form pre-judgments of who are the guilty actors before an adequate body of facts has been collected and a full investigation has been conducted. In a truly free state, the first law of nature, self preservation, the right to self defense is respected. Some politicos act as if they and their group have a monopoly on this right. True freedom does not grant preferential treatment based on color, religion, gender, age, or political persuasion. It is moral, ethical, and law abiding behavior that counts. Suspects are not defendants until charged with a crime, and defendants must be presumed innocent until proven guilty. ★

ACKNOWLEDGMENT

The author gratefully acknowledges Massad Ayoob for his helpful comments on an earlier draft of this article.

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