

**STAND YOUR GROUND**  
Provision in  
Chapter 776, FS  
Justifiable Use of Force

- The cardinal rule which the courts follow in interpreting the statute is that it should be construed so as to ascertain and give effect to the *intention of the Legislature*.

- “the Legislature finds that it is proper for law-abiding people to protect themselves, their families, and others from intruders and attackers *without fear of prosecution* or civil action for acting in defense of themselves and others.”

- Civil immunity bars a claim of damages for a personal injury or wrongful death in situations where the person who inflicted the injury falls under the protection of the immunity statute.

- common law – meaning principles and rules derived from usages and customs from time immemorial.

- Castle doctrine applies to one's dwelling, residence and occupied vehicle.

- A person was not required to retreat in their own “castle” before resorting to deadly force in self-defense, so long as he or she *“reasonably believed”* the deadly force was necessary to prevent death or great bodily harm or to prevent the imminent commission of a forcible felony.

- The SYG provision in the law eliminates the burden of proving that the defender had a *reasonable belief* that deadly force was necessary.

- A person who unlawfully and by force enters another's "castle" is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

- This means the previously required necessity of malicious intent by the intruder is no longer needed.

- Prior to new law, when an individual was someplace other than castle the law required a person to use every reasonable means available to *retreat* before using deadly force unless retreat would be futile.

- To justify self-defense, a person had to demonstrate real necessity for taking a life and a situation causing a reasonably prudent person to believe that danger is *imminent*.

- Now there is “no duty to retreat” under a broad array of circumstances. The SYG provision in the law has significantly altered the circumstances criminalizing use of deadly force.

- A person who is ... attacked in any 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 repel force by force to the extent which to him seems reasonably necessary under the circumstances to protect himself from injury.

- The defendant attended a large keg party, where most of the guests were recent high school grads. During the party, two teens approached the defendant and a fight ensued during which one of the teenagers struck the defendant in the face with his fist. The defendant a convicted felon was armed with a gun. Upon being punched, he shot and killed both teenagers who were two or three feet away.

- SYG provision for immunity?

- No, because possession of a firearm by a convicted felon qualifies as "unlawful activity".
- What if he hadn't been a convicted felon?

- The "*no duty to retreat*" rule applies only where a person is not engaged in an *unlawful activity*.
- The intent of the legislature was to exclude those actively engaged in criminal activity and protects regular, law-abiding citizens from those "bent on criminal activity."

- Where a defendant is engaged in an *unlawful activity* or is in a place where he does not have a right to be at the time he is attacked, **the common law duty to retreat still applies.**

- LaRose drove to a housing project to buy marijuana. He carried a revolver with him. He exited his vehicle and during his walk, he was confronted by Darling . Both parties escalated the conflict by firing their weapons at each other. A nine year old bystander was killed during the shootout. Darling was charged with the murder of the nine year old child.

- Darling argued that he was not responsible for the deadly shooting because he fired in response to a perceived threat from the other shooter. There was significant evidence to suggest that Darling was in fear for his life.

- SYG provision for immunity?

- The police originally did not arrest Darling. Eventually they did and the defendant did not win the SYG motion. But this case illustrates that under certain circumstances even when an innocent bystander is killed the person's family has no recourse if the defendant was using deadly force within the requirements of the statute. A trial judge can grant absolute immunity from criminal prosecution and civil liability.

- The courts have not defined the exact scope of “unlawful activity” and the statute does not define it.

- More specifically the law does not define the precise time framing for the unlawful activity.

- If a statute prohibits the activity it is unlawful activity.

- Carroll, drove to the home of Heckman. Carroll and Heckman engaged in a verbal dispute on Heckman's driveway. Carroll got upset and threatened to break Heckman's jaw and then walked back to his truck.

- Heckman went into the garage and skipped a brass door handle down the driveway hitting Carroll's truck. Carroll then jumped out of the truck and ran toward Heckman.

- Heckman ran back into his house and Carroll picked up a pole in the garage and began vandalizing Heckman's vehicle. Heckman retrieved his gun and came back outside. At this point Carroll had left the garage and was retreating to his truck. Carroll was fifteen feet away from Heckman. According to Heckman, Carroll made a “furtive movement” towards Heckman by leaning in Heckman's direction. Heckman then fired his revolver twice, hitting Carroll once in the thigh.

- SYG provision for immunity?

- No, At the time Heckman used deadly force against Carroll, Carroll was not inside the garage or in the process of entering. Carroll was retreating from the garage to his vehicle, which he had almost reached.

- If Carroll was in the street when he was fired at by Heckman and pulled his own gun and fired back could he claim self defense.

- Maybe Justification for using deadly force in self defense, which includes the “stand your ground” defense, does not apply to a person who *provokes* the attack. Unless: (1) there is no means of escape other than the use of deadly force, or (2) if the provoking person withdraws from physical contact or unequivocally indicates his desire to withdraw from the confrontation and the alleged victim continues or resumes the use of force.

- Rich, whose car had been towed by one of Montanez's tow truck employees, came to lot to recover his truck. Rich gained entry to his vehicle and attempted to drive away. He drove the vehicle towards Montanez and one of Montanez's employees.

- Montanez claimed he dove out of the way to avoid being hit by the vehicle. The physical evidence revealed that the bullet entered the front side passenger window and then struck Rich, suggesting that Montanez fired the weapon as the vehicle was passing him. Montanez argued that he had a reasonable belief that Rich was using the vehicle as a deadly weapon and claimed

- SYG provision for immunity?

- No, Under certain circumstances, a vehicle may be used in a threatening manner , it might not be unreasonable to use a weapon in self-defense. In this case, Montanez discharged his firearm after the “zone of uncertainty” had passed; thus, the threat of imminent death or great bodily harm had also passed. There was also an issue of Montanez protecting his employee whom he believed was in harms way.

- It is important to note that self defense is applicable when a person is defending another from death or great bodily harm. But of course all the same rules apply.

- Harper, the victim, had unlawfully and forcibly entered a vehicle occupied by three individuals with whom he had a dispute earlier in evening. Hair and Harper tussled within the interior of the vehicle and Hair was using a gun as a club when the gun discharged accidentally.

- There was some evidence that Harper may have been exiting the vehicle at the time of the shooting. The physical evidence was clear that Harper was still inside the vehicle when he was shot.

- SYG provision for immunity?

- Yes, although victim may have been exiting the vehicle at the time of the shooting it is clear that he was still inside the vehicle when he was shot.

Unfortunately the judge wrote in his opinion,“ the statute made no exception from immunity if the victim was in retreat when the defensive force was employed”.

- Imminent means about to occur, impending. The person against whom the deadly force was used must have already unlawfully and forcibly entered or must be in the process of unlawfully and forcibly entering... but not *retreating*. However, the new law fails to include word *imminent* in non “castle” situations.

- The "Stand Your Ground" provision of Chapter 776 Florida statute does not restrict the time frame for determining immunity, but rather provides a time continuum stretching across the entire criminal process, including the arrest, detention, charging, and prosecution.

- “law enforcement agencies must employ standard procedures for investigating the use of force.” A person is arrested for using force only when and if it is determined that there is *probable cause* that the force that was used was unlawful.

- The statute is not a substantive change in how the police investigate a case. Before any police officer can sign a criminal complaint, the officer must have *probable cause* to believe a crime has been committed. This emanates from the U.S. Constitution.

- Probable Cause  
means having more  
evidence for than  
against.

- an officer cannot properly sign a criminal complaint if the evidence shows the killing was justified.

- Beyond a Reasonable Doubt – clear, precise, fully satisfied

- The court cannot deny the motion when “the facts are in dispute.”
- In most cases, where a prosecutor has elected to file charges, there will be a factual dispute about whether immunity applies. The Supreme Court ruled that this would undercut the concept of immunity adopted by the legislature.

- When the defendant invokes statutory immunity, the trial court must hold a pre-trial evidentiary hearing to determine if the use of deadly force warrants immunity. At this stage the trial court must weigh and decide only factual disputes.

- Preponderance-  
evidence which is of  
greater weight or more  
convincing than  
evidence to the contrary

- This process places the burden of weighing the evidence squarely upon the trial judge's shoulders.

- The statute provides for true immunity from criminal prosecution rather than merely an affirmative defense. If a motion to dismiss is denied a defendant is not precluded from submitting the matter to the jury as an affirmative defense in his criminal trial.

- “forcible felony,” which means (murder, carjacking, sexual battery, robbery...)

- Rob is holding up a liquor store with a gun. Lou approaches from behind and hits him over the head with a bottle and Rob shoots him dead. Rob cannot claim self defense.

- Competent  
Substantial Evidence

- Upon appellate review of a circuit court's ruling on a "Stand Your Ground" provision motion to dismiss, the findings of fact are presumed correct and can be reversed only if not supported by *competent substantial evidence*.