

PRELIMINARY
REPORT TO THE GOVERNOR'S
TASK FORCE ON CITIZEN
SAFETY AND PROTECTION
SEPTEMBER 12, 2012



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Preliminary Report to the Governor's Task Force
On Citizen Safety and Protection
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I. INTRODUCTION

In 2005, the Florida legislature expanded the Justifiable Use of Force definition (self defense) to include the use of deadly force outside of the home and removed the “duty to retreat” requirement. *FSA 776.012(2012)*. The right to defend one’s home has been a historically protected right sometimes referred to as the Castle Doctrine”. Under common law, the use of force by an individual who was violently assaulted in their home, who was not the aggressor and who reasonable believed that such force was necessary to protect them from death or great bodily harm had no duty to retreat. *Danford v. State*, 53 Fla. 4, 13 (Fla. 1907)

In public places justifiable use of deadly force was available to individuals who reasonably believed that such force was necessary to prevent imminent death or great bodily harm, or to prevent the imminent commission of a forcible felony. *Lovett v. State*, 30 Fla. 142, 163-164 (Fla. 1892). However, in order to avail oneself of this defense the person was required to retreat (run away), or show that they were unable to retreat safely and that the use of deadly force was their only possible alternative to protect themselves against imminent death or great bodily harm. *State v. Bobbitt*, 415 So. 2d 724 (Fla. 1982); *Weiland v. State*, 732 So. 2d 1044 (Fla. 1999). The purpose of the retreat rule was to protect human life from harm when violent conflict could be avoided by retreat.

The Justifiable Use of Force law was amended to provide that “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 another or to prevent the commission of a forcible felony.” *FSA 776.012(3) (2012)*. The law was also amended to create immunity from arrest, criminal prosecution or civil action for the use of deadly force as defined by the amended statute. *FSA*

776.032, (2012). The change in this law has been commonly referred to as the Stand Your Ground Law. (*hereinafter referred to as SYG*)

In 2005 Florida was the first of twenty six states to enact some version of this law.

The other states include:

- Alabama
- Alaska
- Arizona
- Georgia
- Indiana
- Kansas
- Missouri
- North Dakota
- Oklahoma
- South Carolina
- Wisconsin
- Kentucky
- Mississippi
- Nevada
- South Dakota
- West Virginia
- Louisiana
- Michigan
- Montana
- New Hampshire
- Pennsylvania
- Tennessee
- North Carolina
- Ohio
- Texas

This report will respond to the Governor's Task Force on Citizen Safety and Protection's (*hereinafter referred to as Task Force*) request for an objective examination of the impact that the SYG has had on the State of Florida, using data from unbiased sources. This report will address the Task Force's request to focus on the concepts listed below and whether any correlation exists between them and the passing of the Law in 2005. Finally, the report will outline additional considerations that should be addressed in order to thoroughly and accurately assess the impact of the Law. The data contained in this report is preliminary and not intended to

be used as a definitive study. As such this report should not be relied upon for any recommendations until the report has been finalized.

II. INFORMATION REQUESTED BY THE TASK FORCE

The Task Force has requested information on how SYG has impacted the following areas:

- A. The number of overall homicides
- B. The number of Justifiable Homicide claims
- C. The violent crime rate
- D. Gun license applications
- E. Tourism

A. THE NUMBER OF OVERALL HOMICIDES

The data suggests an increase in the homicide rate since the SYG was passed in 2005. *See Table 1.* We cannot say with confidence that the data supports any correlation between the increase in the homicide rate and Stand Your Ground. While there appears to be a difference when comparing homicides shortly before and then after Stand Your Ground, it is unknown at this point if this difference is due to chance or whether it is actually a consequence of implementing Stand Your Ground. The data includes all types of homicides, including non-firearm homicides. The data includes homicides by both law enforcement and citizens. The data also includes non-negligent manslaughter.

In order to determine if any correlation exists between the increase in the homicide rate and the SYG, further research is required. An accurate assessment would include a review of homicides where the SYG defense has been applied, to discover whether those cases have impacted the homicide rate. Additional research would require month-to-month data on homicides through US Vital Statistics, FDLE Restricted Data, and disaggregate homicides by type.

B. THE NUMBER OF JUSTIFIABLE HOMICIDE CLAIMS

The data suggests an increase in justifiable use of deadly force claims since the SYG was passed in 2005. *See Table 2.* However, insufficient evidence exists to conclude that any correlation exists between the increase in justifiable use of deadly force claims and Stand Your Ground.

While the general trend shows that justifiable homicide numbers have been increasing since 2000, we cannot say that this increase is the result of SYG. The data shows general trends and cannot address the question of whether the law has affected the number of homicides.

In order to determine if any correlation exists between the increase in Justifiable use of deadly force claims and SYG, further research is required. It is necessary to review the files of Law Enforcement, State Attorneys and Clerks of Court in each jurisdiction in order to discover the disposition of the cases involving justifiable use of deadly force claims. Research will also include a collection of month-to-month data on the number of justifiable homicides, as well as interview data on citizens who have used SYG and an assessment of how SYG impacted their actions. Future analysis may support or exclude alternative explanations.

C. THE VIOLENT CRIME RATE

The data suggests a decrease in the violent crime rate. *See Table 3.* However, there is insufficient evidence to conclude that there is any correlation between the violent crime rate SYG. Generally, the trend points to violence decreasing since 2002. This is a slow, gradual decrease in violence over time. When the SYG took place in 2005, violent crime rates were decreasing; they continued to decrease afterwards, the data does not show that there is any relationship between SYG and violent crime rates in Florida. This trend could be due to changes in demographics (i.e., unemployment) or changes in law enforcement over time.

In order to determine if any correlation exists between violent crime and the SYG, further research is required. The cases where SYG has been used as a defense must be reviewed in order to determine if SYG was used in response to violent crime, or if the use of SYG in and of itself results in an increase in violent crime. Research would also include a collection of month-to-month data on violent crimes and types of violent crimes, interviews with violent offenders and an assessment of whether the SYG altered their behavioral patterns. Future analysis may support or exclude alternative explanations.

D. GUN LICENCE APPLICATIONS

The data suggests an increase of triple the amount of gun permit applications since the SYG was passed in 2005. *See Table 4.* However, insufficient evidence exists to support any correlation between the increase in gun permit applications and SYG. Several conditions other than SYG could have impacted the increase in applications (i.e. the economy or proposed changes to gun laws).

In order to discover if any correlation exists between the increase in gun permit applications and the SYG, further research is required. A collection of month- to- month data on applications for gun licenses, as well as a survey of the gun permit applicant population to assess whether SYG affected their application patterns, is necessary to determine if any correlation exists.

E. TOURISM

The data suggests that tourism has remained unchanged since the SYG was passed in 2005. *See Table 5.* However, the data is insufficient to support any correlation between tourism and Stand Your Ground. In order to determine if any correlation exists between tourism and Stand Your Ground, further research is required. A survey of the population with an assessment of whether SYG has impacted their decision to visit Florida is a necessary starting point in determining if such a correlation exists.

III. CHALLENGES TO AN ACCURATE ASSESSMENT

A. UNIFORM CRIME REPORTS

The United States Bureau of Justice Statistics and Florida Department of Law Enforcement (FDLE), Uniform Crime Reports (UCR) are the primary sources of the information contained within this report. While the UCR are widely recognized for unbiased and reliable information, information obtained from the UCR alone does not provide a complete evaluation of SYG Cases.

According to the FDLE, UCR, Justifiable homicides are not included in the summary totals reflected on the UCR Form, but are included on the Supplemental Homicide Report, and justifiable homicides are not counted as murders. Additionally, the justifiable homicide

determinations listed in the UCR Supplemental Homicide Reports are based only on the investigating officer's findings. Determinations made by the state attorney, court or jury are not reflected in these numbers. The numbers include killings by law enforcement officers in the line of duty as well as by private citizens. As such, UCR data is merely a starting point for this analysis. In order to achieve an accurate assessment, additional information must be obtained from the individual law enforcement agencies regarding the circumstances surrounding each case. Information must also be obtained from each judicial circuit regarding the disposition of the cases labeled justifiable by law enforcement, in addition to cases that have been filed by the state attorney, despite law enforcement's determination of a homicide as justified.

B. USE OF CROSS PURPOSE TERMINOLOGY

Many of the reports refer to victims, offenders, and felons. The use of the terminology may differ based on the perspective of the user. For instance, the Bureau of Justice Statistics refers to the person killed in a justified use of homicide case as a felon. However, the Uniform Crime Reports refer to the person killed by the user of the SYG defense as the victim, and the user of the SYG defense as the offender. In order to conduct an accurate assessment, it is essential to determine the appropriate use of each term and define each term clearly for the purpose of this analysis.

IV. ADDITIONAL CONSIDERATIONS

A. THE IMMUNITY PROVISION

Florida Statue 776.032 provides that "(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)."

Of the twenty six states that have adopted SYG type laws, Florida is one of four states that have prescribed immunity from arrest for individuals claiming SYG as a defense. Florida is one of fourteen states that prescribe immunity from criminal prosecution. This analysis is beyond the scope of this report and further analysis is required, however a complete report will include an analysis of the benefits and detriments that the immunity provision has on society at large.

B. COLLATERAL CONSEQUENCES

1) Reconciling the Reasonable Belief of an Individual, With the Killing on an Innocent Victim

Florida Statute 776.012 provides that "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."

Because the law requires only that an individual's belief be reasonable prior to the use of deadly force, the possibility exists that the innocent will be killed based on an individual's belief that although legally reasonable, may be factually inaccurate.

2) The Innocent Bystander

Another possible innocent victim is the bystander who may be shot by bullets misfired by an amateur marksman who is justified to open fire in a public place based on reasonable belief.

3) Inconsistent Application

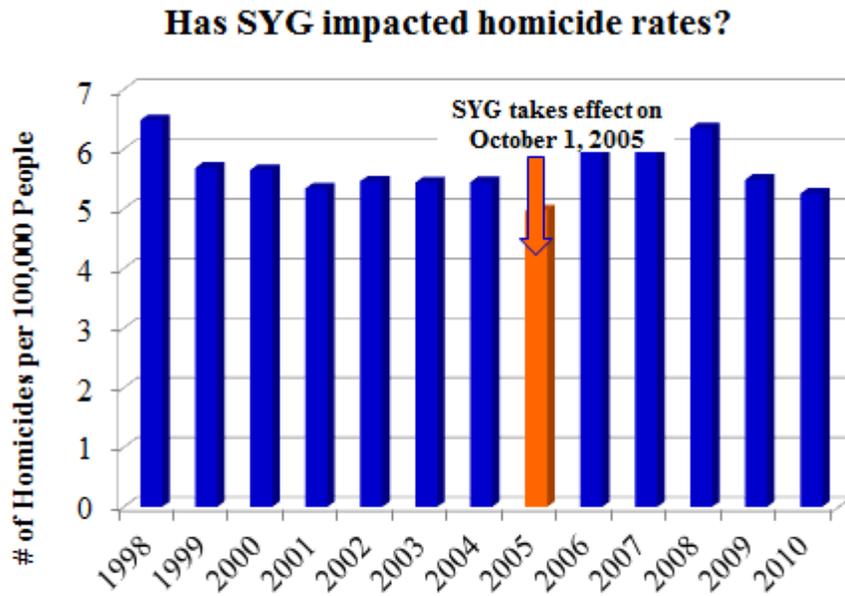
Jurisdictional inconsistencies of how the law is applied may lead to unjust results and public distrust in the judicial system. There have been cases that call to question the application of SYG as it relates to women and minorities. There are also questions regarding the equity of the Law's application based upon the customs of law enforcement, prosecutors, judges and juries from county to county. For example the law could be further compromised if under the same set of facts, someone is granted immunity from prosecution under SYG in Lake County, but tried, convicted and sentenced to life in prison in Levy County.

This analysis is beyond the scope of this report; however a complete report will include an examination of how the killing of the innocent and the exoneration of their killers based on SYG impacts society at large. Further research will also assess the application of SYG throughout the state.

V. CONCLUSION

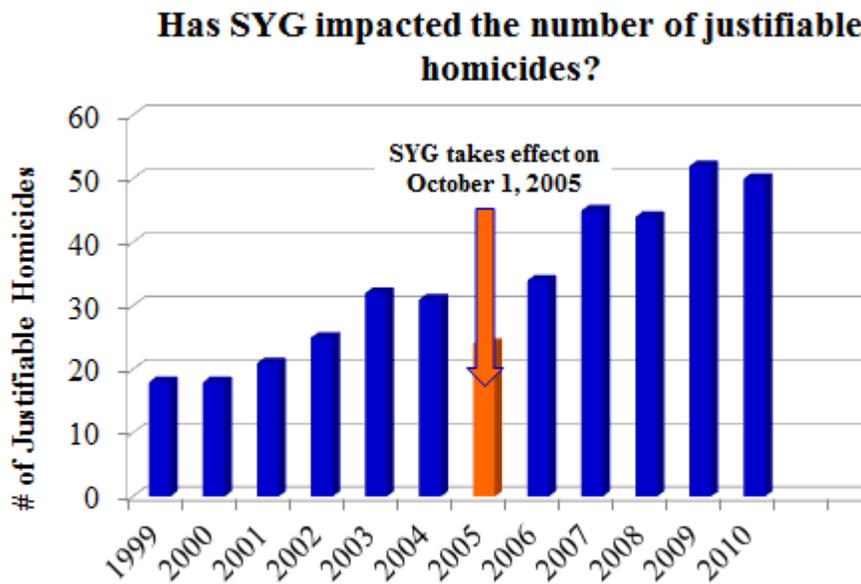
How SYG impacts the safety and protection of the citizens of the State of Florida is currently unknown. The data that has been collected in response to the Task Force's request is insufficient to provide a conclusion on this issue. This is a complex issue, which requires complex analysis. The additional research described in this report will require the dedication of specific resources in order to produce a complete and accurate analysis. It is our recommendation to the Task Force that the appropriate resources be dedicated to obtaining a thorough analysis to appropriately address this matter of great magnitude and public importance.

Table 1. THE NUMBER OF OVERALL HOMICIDES



Current data cannot answer this question.

Table 2. THE NUMBER OF JUSTIFIABLE HOMICIDE CLAIMS



Existing data cannot confirm this hypothesis.

Table 3. THE VIOLENT CRIME RATE

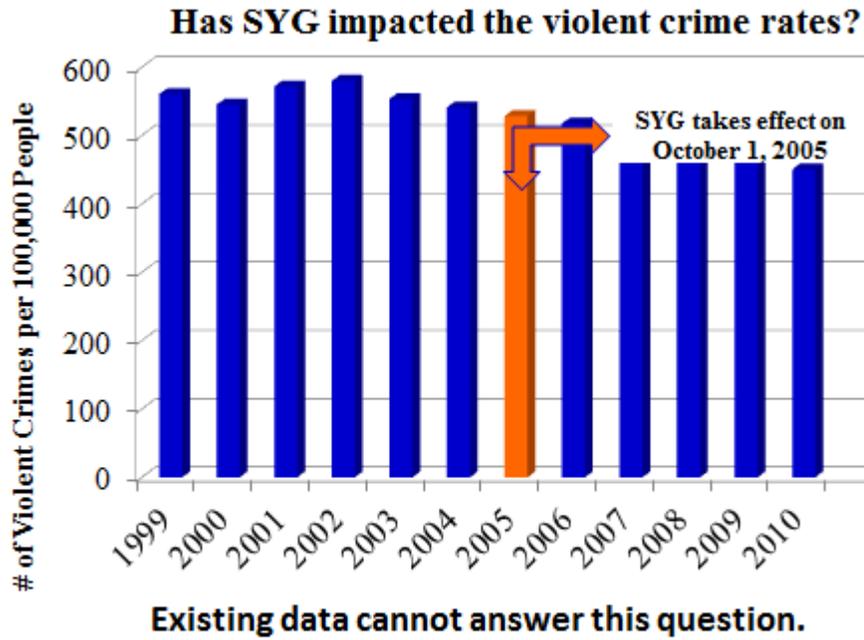


Table 4. GUN LICENSE APPLICATIONS

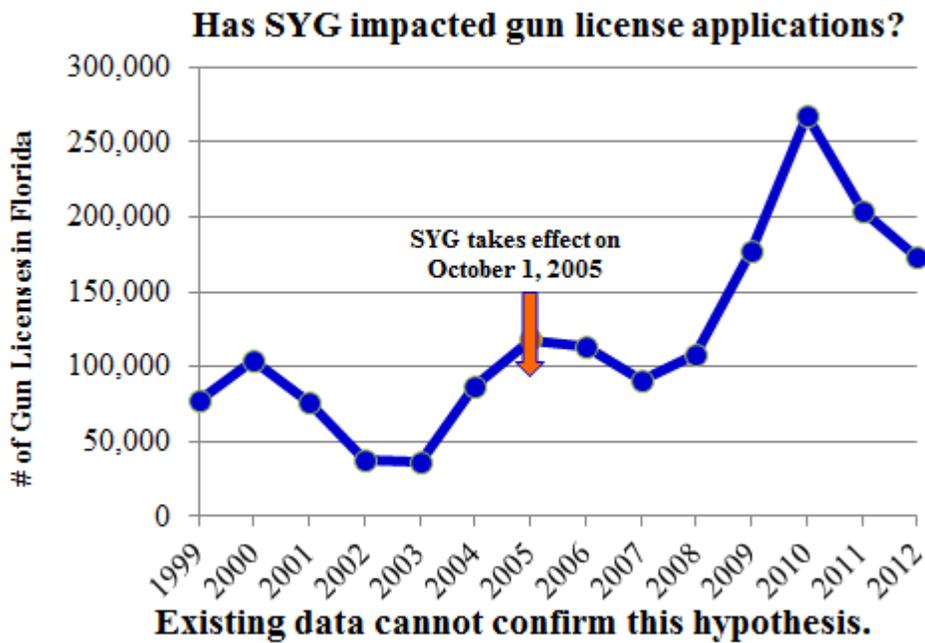
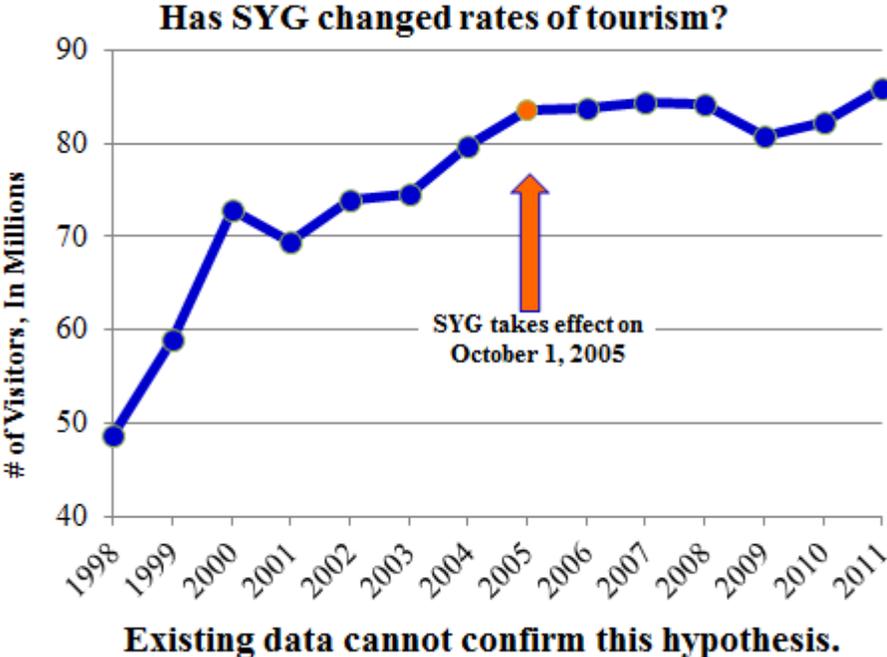


Table 5. TOURISM



References

“FL Justifiable Homicide”

- US: Bureau of Justice Statistics, Uniform Crime Report
- FL: Florida Department of Law Enforcement
- CA: State of California Department of Justice <http://ag.ca.gov/cjsc/pubs.php#homicide>
- TX: Texas Department of Public Safety
http://www.txdps.state.tx.us/administration/crime_records/pages/crimestatistics.htm#2009

“FL Violent Crime”

- US: Uniform Crime Report
- FL: Uniform Crime Report
- CA: Uniform Crime Report
- TX: Uniform Crime Report

“Homicide and Violent Crime”

- <http://www.ucrdatatool.gov/Search/Crime/State/OneYearofData.cfm>

“FL Justifiable Homicide_Homicide”

- Florida Department of Law Enforcement
- Uniform Crime Report

“Index Crimes_Justifiable Homicide_By Race”

- <http://www.fdle.state.fl.us/Content/getdoc/5992e741-1792-4f82-b878-90deb2946671/UCR-Arrest-Data.aspx>
- Supplemental Homicide Report

“Tourism and Concealed Weapons Data”

- <http://www.visitflorida.com>
- <http://www.freshfromflorida.com>