



## LULAC FLORIDA

Good morning, Lt. Governor, Jennifer Carroll, Chair of the Governor's Task Force on citizens safety and protection. In addition, good morning to the distinguish members of the Task Force.

I take this opportunity to thanks the Chair of the Task Force for extending me and invitation to appear before the Task Force on Citizen Safety and Protection which I agreed to represent the League of United American Citizens (LULAC) and civil rights panel and provide input to the Task Force members regarding the "Stand Your Ground Law".

My name is Jose A. Fernandez, I am a retired Lt. Coronel of the United States Army; immediate past Director of the LULAC Florida and Public Relations Director for the International Embassy of LULAC. In addition I am retired from the Government of the Commonwealth of Puerto Rico with 30 years of service as Director of the Department of Aviation, Chief of Public Relations and Press and Civil Right Director of the Puerto Rico Ports Authority. I have a Bachelor Degree in Business Administration from the University of Puerto Rico, and study Law Degree at the Catholic University of Puerto Rico.

### **From Wikipedia:**

The Stand Your Ground Law states that a person may use force in self defense when there is reasonable belief of a threat, without an obligation to retreat first. In some cases, a person may use deadly force in public areas without a duty to retreat. Under these legal concepts, a person is justified in using deadly force in certain situations and the "Stand Your Ground" law would be a defense or immunity to criminal charges and civil suits. The difference between immunity and a defense is that on immunity there are no suit, charges, detention and arrest: A defense, such as an affirmative defense, permits a plaintiff or the state

to seek civil damages or a criminal conviction but may offer mitigating circumstances that justify the accused conduct.

More than half of the states in the United States have adopted the Castle Doctrine, stating that a person has no duty to retreat when their home is attacked. Some states go a step further removing the duty of retreat from other locations. "Stand Your Ground", "LINE IN THE SAND" or "DUTY TO RETREAT" laws thus state that a person has no duty or other requirement to abandon a place in which he has a right to be, or give up grounds to an assailant. Under such laws, there is no duty to retreat from anywhere the defender may legally be. Other restriction may still exist; such as when in public, a person must be carrying firearms in a legal manner, whether concealed or openly.

"Stand Your Ground" governs U.S. federal case law in which right of self-defense is asserted against a charge of criminal homicide. The Supreme Court of the United States ruled in *Beard v. U.S.* (158 U.S. 550 (1895)) that a man who was "on his premises" when he came under attack and "... did not provoke the assault, and had at the time reasonable grounds to believe and in good faith believed, that the deceased intended to take his life, or do him great bodily harm... was not obligated to retreat, nor to considered whether he could safely retreat, but was entitle to stand his ground.

Justice Oliver Wendell Holmes, Jr. declared in *Brown v. United States* (256 U.S. 335, 343 (May 16, 1921)), a case that upheld the "no duty to retreat" maxim, that "detached reflection cannot be demand in the presence of an uplifted knife.

### **Effects on Crime rates:**

The law effects on crime rates disputed between supporters and criteria of the law. The third edition of "more guns, less crime" (University of Chicago Press, 2010) by John Lott provides the only published, referenced academic study on these laws. The research shows that states adopting "Stand Your Ground" / Castle doctrine" laws reduced murder to 9 percent and overall violent crimes by eleven (11) percent, and that occur even after accounting for a range of other factors such as national crime trends, law enforcement variable (arrest, executions and imprisonment rates), income and poverty measures (poverty and unemployment rates per capita real income, as well maintenance, retirement, and unemployment), demographic changes (broken down by race, gender and

age), and the national average changes in crime rates from year to year and average differences across states (the fixed year and state effects).

In a 2007 National District Attorneys Association symposium, numerous concerns were voiced that the law could increase crime. This include criminals using the law as a defense for their crimes, more people carrying guns, and that people would not feel safe if they felt that anyone could use deadly force in a conflict. The report also noted that the misinterpretation of clues could result in use of deadly force when there was in fact, no danger. The report specifically notes that racial and ethnic minorities could be at greater risk because of negative stereotype.

Florida states Representative Dennis Baxley, an author of the law, notes however that crime rates in Florida dropped significantly between 2005, when the law was passed, and 2012.

Many states have some form of Castle Doctrine or Stand Your Ground law such as: Alabama, Alaska, Arizona, California, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, Montana, New Hampshire, North Carolina, North Dakota, Tennessee, Texas, Utah, West Virginia, Wisconsin and Wyoming have adopted Castle Doctrine statutes and other states (Iowa, Virginia and Washington) are currently considering "Stand Your Ground" laws of their own. Some of the states that have passed or considering "Stand Your Ground" laws already implements "Stand Your Ground" principles in their case law. Indiana and Georgia, among other states, already had "Stand Your Ground" case law and passed "Stand Your Ground" statutes due to possible concerns of the case law being replaced by "duty to retreat" in later court rulings. Others states, including Washington have "Stand your Ground" in their case law but have not adopted statutes. West Virginia had a long tradition of 'Stand Your Ground' in its case law before codifying it as statutes in 2008. These states did not have civil immunity for self defense in their previous self defense statures.

### **Florida:**

2011 Florida Statures Chapter 776 Justifiable Use of Force

776.012 – Use of force in defense of person.

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 for 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 believe 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

776.013 – Home protection; Use of deadly force; presumption of fear of death or great bodily harm:

1. A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to him, 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 in the process of unlawfully and forcefully entering a dwelling residence or occupied vehicle or if that person had removed or was attempting to remove another against that persons will from dwelling, residence or occupied vehicle; and
- b. the person who uses defensive force know or had reason to believe that unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

2. The presumption set forth in subsections (1) does not apply if:

- a. The person 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 owner, lesser, or title holder and then is not an injunction for protection from domestic violence or written pretrial supervision order of no contact against that person; or
- b. 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 defense force is used; or
- c. The person who uses defensive force is engage 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 S. 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 officers identified himself or

himself 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.

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

4. A person who unlawfully and by force enters or attempt 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.

5. As used in this section, the term

- a. dwelling – defined
- b. residence – defined
- c. vehicles – defined

776.032 – Immunity from criminal prosecution and civil action for justifiable use of force (**READ FROM DOCUMENT**)

776.41 – Use of force by aggressor – The justification described in the preceding sections of these chapters is not available to a person who:

- 1. Is attempting to commit, or escaping after the commission of a forcible felony; or
- 2. Initially provokes the use of force against himself or herself, unless:
  - a. Such force ... (**READ FROM DOCUMENT**)
  - b. In good faith, the person withdraws from physical contact with the assailant that he or she desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

LULAC is one of the oldest Membership Civil Rights organizations in the United States and its mission is to advance the economic condition, educational attainment, political influence, housing, health and civil rights, economic empowerment, immigration, public service and technology of the Hispanic population of the United States.

Annually, LULAC engages its works of 135,000 community volunteers, 880 local councils, 60 community technology centers and 15 LULAC National Educational Service Centers to empower Hispanic families through direct

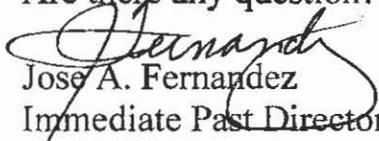
service programs and advocacy in 34 States, the District of Columbia and Puerto Rico. It's our opinion that we should better define the unlawful activities mentioned in the law.

In addition the law does not say that we want to avoid selective enforcement. Sections 776.013 should be revised or readdressed in the area of defining the unlawful activities and the presumption of fear of death or great bodily harm. In addition, expand the definition of dwelling, residence, or vehicle. Finally, social and ethnic minorities could be at great risk because of negative stereotypes that might be wrongly interpreted by the Law and Order authorities. Additional training to law enforcement officer should be provide on the law and the avoidance of racial and ethnic profiling. The word immunity and defense such as affirmative defense should be more explicit and or more defined within the law, since defense permits a plaintiff or state to seek damages and immunity bars suit, charges, detention and arrest. See section 776.032

It is LULAC intention to help this Task Force in all manners possible especially in dealing with the civil rights of the Hispanic community of Florida in a growing Hispanic population of 22.5 percent and specially in Florida.

Thank you for your time and invitation to participate in this civil rights panel.

Are there any question?



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