



Written Statement of the American Civil Liberties Union

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Hearing on:
*“Stand Your Ground” Laws: Civil Rights and Public Safety Implications of the Expanded Use of
Deadly Force*

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The American Civil Liberties Union (ACLU) is a non-partisan advocacy organization with over a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of equality and justice set forth in the U. S. Constitution and in our laws protecting individual rights. We appreciate the opportunity to submit testimony regarding “Stand Your Ground” (SYG) laws, which give an individual the right to use deadly force to defend themselves without a duty to retreat from a dangerous situation if the individual believes force is necessary to prevent death or serious bodily injury or prevent a forcible felony. The ACLU has encouraged its affiliates in states with SYG laws to support their repeal because SYG laws encourage vigilante justice and exacerbate racial disparities in the criminal justice system.

Proliferation of SYG laws

Since 2005 a number of states have enacted SYG laws. States allowing the use of deadly force in self-defense with no duty to retreat in locations where a person may legally be include: Alabama,¹ Arizona,² Florida,³ Georgia,⁴ Illinois,⁵ Indiana,⁶ Kansas,⁷ Kentucky,⁸ Louisiana,⁹ Michigan,¹⁰ Mississippi,¹¹ Montana,¹² Nevada,¹³ New Hampshire,¹⁴ North Carolina,¹⁵ Oklahoma,¹⁶ Oregon,¹⁷ South Carolina,¹⁸ South Dakota,¹⁹ Tennessee,²⁰ Texas,²¹ Utah,²² Washington,²³ and West Virginia.²⁴

¹ Ala. Code § 13A-3-23.

² Ariz. Rev. Stat. §§ 13-404, 13-405, 13-413.

³ Fla. Stat. Ann. §§ 776.012, 776.013, 776.032.

⁴ Ga. Code. Ann. §§ 16-3-21, 16-3-23.1, 16-3-24.2.

⁵ 720 Ill. Comp. Stat. 5/7-1; *see also In re T.W.*, 888 N.E.2d 148, 157 (Ill. App. 2008) (stating “a person who is not the initial aggressor has no duty to retreat.”); *Illinois v. White*, 638 N.E.2d 314, 320 (Ill. App. 1994) (stating “[w]e agree with the defendant that it has long been the law in Illinois that a person who is not the initial aggressor has no duty to retreat.”).

⁶ Ind. Code § 35-41-3-2.

⁷ Kan. Stat. Ann. §§ 21-5230, 21-5222, 21-5224, 21-5230, 21-5231.

⁸ Ken. Rev. Stat. Ann. §§ 503.050, 503.085.

⁹ La. Rev. Stat. §§ 19, 20.

¹⁰ Mich. Comp. Laws §§ 780.972, 780.951, 600.2922b.

¹¹ Miss. Code Ann. § 97-3-15.

¹² Mont. Code Ann. §§ 49-1-103, 45-3-102, 45-2-103, 45-3-104, 45-3-110.

¹³ Nev. Rev. Stat. § 200.120.

¹⁴ N.H. Rev. Stat. § 627:4.

¹⁵ N.C. Gen. Stat. § 14-51.2.

¹⁶ Okla. Stat. tit. 21, § 1289.25.

¹⁷ Or. Rev. Stat. §§ 161.209, 161.219; *see also State v. Sandoval*, 342 Or. 506, 513-14 (2007) (interpreting Or. Rev. Stat. 161.219 to lack a duty to retreat).

¹⁸ S.C. Ann. § 16-11-440.

¹⁹ S.D. Codified Laws §§ 22-5-9, 22, 16-34, 22-18-4.

²⁰ Tenn. Code Ann. § 39-11-611.

²¹ Tex. Penal Code Ann. § 9.32.

²² Utah Code Ann. 76-2-402.

²³ Wash. Rev. Code §§ 9A.16.020, 9A.16.030; *see also Washington v. Redmond*, 78 P.3d 1001, 1003 (Wash. 2003) (holding “[t]he law is well settled that there is no duty to retreat when a person is assaulted in a place where he or she has a right to be.”); *Washington v. Studd*, 973 P.2d 1049, 1056 (1999) (stating “[w]e have previously held that

Nine states have some limited form of SYG laws or case law that extends stand your ground principles to specific locations outside the home, such as a vehicle or place of business or employment. These laws are not as broad as the traditional SYG laws because they do not reach to all places a person may legally be. The states with these limited laws are Alaska,²⁵ Connecticut,²⁶ Hawaii,²⁷ Iowa,²⁸ Missouri,²⁹ North Dakota,³⁰ Ohio,³¹ Pennsylvania,³² and Wisconsin.³³

Prior to 2005, when SYG laws began to sweep the country, most states required an individual facing a threat to retreat before using deadly force. This position—requiring retreat before the use of deadly force—was embraced by the Model Penal Code (MPC) in 1962.³⁴ While the MPC was influential in shaping state penal codes, the rise of SYG laws since 2005 has altered the legal landscape. Now, given the prevalence of SYG laws and limited SYG laws, the majority of states have rejected the duty to retreat prior to using deadly force and allow for the use of lethal force to prevent any forcible felony. SYG laws frequently provide criminal and civil immunity for the use of force, and presume that a person has a reasonable fear of imminent death or great bodily harm when using defensive force in a dwelling, residence, or occupied vehicle.

SYG laws raise significant civil liberties concerns

The most serious deprivation of liberty that a person can inflict is killing another individual. The irreversibility of a homicide means that error discovered after a death has occurred cannot be corrected. By increasing the circumstances in which private individuals may use lethal force without fear of legal consequences, SYG laws increase the number of people who are killed without due process of law. For example, since the passage of Florida's SYG law in 2005, the number of justifiable homicides has tripled, according to Florida Department of Law

no duty to retreat exists when one is feloniously assaulted in a place where one has a right to be.”) (internal quotations and citation omitted).

²⁴ W. Va. Code § 55-7-22.

²⁵ Alaska Stat. §§ 11.81.335, 09.65.330.

²⁶ Conn. Gen. Stat. § 53a-19.

²⁷ Haw. Rev. Stat. Ann. § 703-304.

²⁸ Iowa Code Ann. §§ 704.1, 704.3; *see also State v. Marin*, 776 N.W. 2d 111 (Iowa App. 2009) (finding that case law has expanded the scope of the castle doctrine in Iowa to reach “a man’s home, his office, or place or business and the property owned or lawfully occupied by him”); *State v. Parker*, 261 Iowa 88, 98 (1967) (law imposes a duty to retreat “so far as he reasonably and safely can,” not the traditional duty to “retreat to the wall”).

²⁹ Mo. Rev. Stat. § 563.031.

³⁰ N.D. Cent. Code § 12.1-05-07.

³¹ Oh. Rev. Code Ann. §§ 2901.05, 2901.09, 2307.601.

³² 18 Pa. Cons. Stat. § 505; 42 Pa. Cons. Stat. § 8340.2.

³³ Erica Goode, *NRA’s Influence Seen in Expansion of Self-Defense Laws*, N.Y. TIMES, Apr. 12, 2012 (describing enactment of such law in Wisconsin in December 2011).

³⁴ *See* Model Penal Code §3.04 (ALI 1985). The version of the MPC published in 1985 is the complete text of the Code as adopted by the American Law Institute (ALI) on May 24, 1962. (Since its adoption in 1962, the Model Penal Code (MPC) has imposed a general duty to retreat before deadly force can be employed in self-defense. The only exceptions to this rule are when an individual is in her home or workplace). *See also Id.* §3.04(h).

Enforcement data.³⁵ In the five years before the law’s passage, Florida prosecutors declared “justifiable” an average of 12 killings by private citizens each year. In the five years after the law passed, that number spiked to an average of 36 justifiable killings per year.³⁶

FBI statistics confirm similar increases in a number of other states with SYG laws.³⁷ Prior to the passage of Georgia’s SYG law, prosecutors found “justifiable” an average of 7 killings by private citizens each year; since the law was passed, the average number is 14 killings a year.³⁸ In Texas, the average was 26 “justifiable” killings a year; now the number averages 45 a year.³⁹ But the rise in justifiable homicides is not universal. Five of the states that enacted SYG laws—Alabama, Kansas, Mississippi, Montana, and West Virginia—reported no significant change in the number of justifiable homicides from 2000 to 2010.⁴⁰ In Michigan, which passed its SYG law in 2006, the number fell.⁴¹

According to an analysis by the *Guardian* of FBI and other data, the rising number of justifiable civilian homicides across the United States is most closely linked to states with both weak gun control laws (as defined by the Brady Campaign Against Gun Violence) and SYG laws.⁴² Overall, there has been a 25 percent increase in justifiable civilian killings since 2005, when SYG laws began to sweep the nation.⁴³

SYG laws also run afoul of international standards protecting the right to life and against non-discrimination and undermine United States human rights obligations under the International Covenant on Civil and Political Rights (ICCPR), ratified by the U.S. in 1992 and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by the U.S. in 1994.

SYG laws exacerbate racial disparities

We should not tolerate a system that treats people unfairly because of the color of their skin. Yet, research shows that SYG laws exacerbate existing racial disparities in the criminal justice system. An Urban Institute study examining data from the Federal Bureau of Investigations Supplementary Homicide Report found that juries are more likely to find that a

³⁵ Fisher & Eggen, *supra* note 6.

³⁶ *Id.*

³⁷ *Id.*; Bloomberg: Stand Your Ground Has Made America Less Safe (MSNBC television broadcast, Apr. 11, 2012).

³⁸ Bloomberg, *supra* note 98.

³⁹ *Id.*

⁴⁰ Palazzolo & Barry, *supra* note 2.

⁴¹ *Id.*

⁴² Henry Enten, et. al., ‘Justified’ homicides up 25 percent since states passed Stand Your Ground Laws, THE GUARDIAN (Apr. 5, 2012).

⁴³ *Id.*

killing was justified when the shooter is white and the victim black. Conversely, when the victim was white and the shooter was not, the shooter is more likely to face legal consequences.⁴⁴

This disparity is detailed in a blog post that cites to an Urban Institute report by the same author, John Roman, published in July 2013, which concludes:

“According to a statistical analysis of homicides drawn from the Supplemental Homicide Reports between the years of 2005 and 2010, cases involving a white shooter and a white victim are ruled justifiable less than 2 percent of the time. If the shooter is black and the victim white, the rate of justifiable cases falls to below 1 percent. If, however, the shooter is white and the victim is black, the shootings are deemed justifiable 9.5 percent of the cases in non-Stand Your Ground states. In Stand Your Ground states, that rate jumps to about 17 percent. Now take a situation similar to the Zimmerman case, which involves a homicide between a shooter and victim, neither being law enforcement, both men, and a firearm used to kill. A little less than 3 percent of black shooter and white victim homicides are deemed justifiable, while white shooter and black victim homicides are ruled to be justifiable about 29 percent in non-Stand Your Ground States and almost 36 percent in Stand Your Ground states.”⁴⁵

Conclusion

The ACLU opposes SYG laws because they raise serious civil liberties and racial justice concerns. SYG laws expand the circumstances in which the state authorizes one person to kill another without any semblance of due process. Also, they exacerbate an existing racial disparity in the success rate of justifiable homicide as a defense whereby a killing is more likely to be deemed “justifiable” if the victim is black and the shooter is not than when the races of the victim and shooter are reversed.

As Attorney General Eric Holder said during his remarks to the NAACP annual conference this year, laws like “Stand Your Ground” undermine innocent Americans’ safety “by allowing - and perhaps encouraging - violent situations to escalate in public.”⁴⁶ Consistent with common law principles and state statutes nationwide, Americans already have the right to defend themselves with commensurate force in situations where they face imminent harm and safe retreat is not an option. SYG laws – or Shoot First or Kill at Will laws – have nothing to do with legitimate self-defense, but instead are invitations for vigilantes to use deadly and unnecessary force.

⁴⁴ John Roman, Ph.D., *Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data*, Urban Institute, 6-10 (2013).

⁴⁵ *Id.*

⁴⁶ Lindsey Boerma, *Holder: 'Stand Your Ground' allows, encourages escalating violence*, CBS News, Sept. 15, 2013.