

March 2015

Florida's Stand Your Ground Law: Enforcement Inconsistencies and Inherent Ambiguities

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Recommended Citation

McCormick, Albert E. Jr. (2015) "Florida's Stand Your Ground Law: Enforcement Inconsistencies and Inherent Ambiguities," *The Journal of Public and Professional Sociology*: Vol. 7 : Iss. 1 , Article 2. Available at: <https://digitalcommons.kennesaw.edu/jpps/vol7/iss1/2>

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Cover Page Footnote

This article is an updated and revised version of a paper presented at the 2014 annual meeting of the Georgia Sociological Association. The author wishes to thank Michelle McCormick, Albert Stuart, Esq., Fred Zampa, and Melvin Fein for their thoughtful critiques of earlier manuscript versions.

Florida's Stand Your Ground Law: Enforcement Inconsistencies and Inherent Ambiguities

Introduction

Beginning with Durkheim (1958; 1960), it has long been held in theories of deviance and the sociology of law that constant rule enforcement is needed to sharpen the line between proper and illegal behavior. As pointed out, though, by Erikson (1966:12-13), boundaries are never fixed, but are always shifting. The creation of a new rule is in itself a result of shifting boundaries. Indeed, according to Chambliss and Seidman (1982:212), a new rule is a fresh norm in a double sense: it is addressed to ordinary citizens as a role-expectation *and* it forms role-defining standards for legal actors, describing actions expected of them if and when certain conditions occur. Therefore, a new rule requires *immediate* and *consistent* enforcement, through clearly defined standards, to clarify behavioral expectations. For Chambliss and Seidman (1982:213) the effectiveness of a new law depends upon the “*unified* and *shared* acceptance of how a law is to be administered” (emphasis added). If the enforcement of a new rule is inconsistent, its interpretation remains ambiguous. As a guideline for behavior, then, the new rule becomes less useful. It may even lose efficacy, perhaps to the point of becoming virtually negated (see, for example, McCormick 1977).

An interesting rule to examine in this regard is Florida's controversial Stand Your Ground Law (SYG), which extensively expanded the legal exercise of deadly force. The law was passed by the Florida legislature and signed into law by then Governor Jeb Bush on April 26, 2005. The stated intent of the law was “to protect the rights of law-abiding citizens who are assaulted and to provide another crime deterrent measure” (Associated Press, 2005). It became operative on October 1 of the same year.

Classically, the use of deadly force is legal only if such force is reasonably believed to be necessary for protection against an imminent and unlawful threat of death or great bodily harm to oneself or another, and there is no opportunity to retreat to a place of complete safety. Many jurisdictions have long had the “Castle Doctrine,” which waives the duty to retreat if one is defending one's home (see Reid, 2004:143-4). The SYG statute, however, removes the “duty to

retreat” clause if a person is in *any location* he or she has a legal right to be.¹ Justification is *not* available, however, if a person “initially provokes the use of force against himself or herself” (FS Sec.766.041 et. seq.). But even with this caveat there are caveats. The statute goes on to state that, even if a person was the aggressor, he/she is still entitled to use deadly force if all means of escape have been exhausted or if the person has indicated to the assailant that he/she desires to withdraw and end the use of force.

Particularly since the Trayvon Martin-George Zimmerman case, Florida’s Stand Your Ground law has become embroiled in increasing controversy. News media, civil rights groups, and some Florida legislators have called into question the law’s application, citing numerous inconsistencies in enforcement and legal interpretation (see, for example, Hundley, et.al. 2012; Menzel 2013; Nichols 2013; Smith 2014;² *Tampa Bay Times* 2012; Wikipedia 2014). Much of the criticism asserts that the SYG law’s application has often been at variance with its legislative intent.

The author has been investigating the situational and enforcement patterns of Florida’s Stand Your Ground law in the years subsequent to its enactment. This inquiry explores the law’s early implementation in light of the literature on rule enforcement theory.

The Data

Using methods described in earlier reports (McCormick 2014a; 2014b), this research found 309 Florida Stand Your Ground cases, occurring from its effective date of October 1, 2005 through the year 2012. Information was gathered on the date and location of the incident, the backgrounds of the principals, the circumstances of the SYG episode, and the legal outcome of the SYG case.

¹ The pertinent section of the Florida *Statutes* (FS Sec. 766.012 et. seq.) reads “...a person is justified in the use of deadly force *and does not have a duty to retreat* if 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 (emphasis added). “Forcible felony” means treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual (FS Sec. 766.08 et. seq.).

² Christopher L. Smith is the Florida Senate Minority Leader. For the 2014 legislative session, Sen. Smith introduced Senate Bill 0122, *An Act Relating to Self-Defense*, with the intent to more precisely define (and limit) conditions under which deadly force may be used. His bill, and other legislative efforts to modify or repeal the law outright, did not meet with success.

Of the 309 cases, three cases are excluded here because, as of this writing, SYG decisions have not yet been reached in them. Four other cases are also excluded, as they concerned animal “assailants.”³ Consequently, 302 cases are examined, involving 316 SYG claimants and 346 alleged assailants.

Some cautions to the data need be mentioned, most of which were specified in the earlier reports cited above. The information was collected and reported in secondary sources by individuals outside of academia. Therefore, the data may not be complete or collected with absolute scientific rigor. Categorization systems differ from one source to the next.⁴ Instances occurred when information was either not available or was deliberately withheld. Most jurisdictions, for example, routinely do not identify juveniles or release any information about them. Every effort was made to verify information, but this was not always possible.⁵ As of this writing, the database contains fifteen cases for which SYG decisions are not necessarily final. These are cases in which SYG decisions have been rendered, but trials, appeals, or retrials are pending. Further court events, then, may result in the reversal of a claimant’s denied SYG motion. Consequently, this inquiry must use SYG decisions as they currently stand, as final resolution of these pending cases may take years.⁶ This presents an unfortunate but inescapable element of uncertainty in the data. Finally, some sources report that SYG defenses have been raised in an undetermined number of minor cases, including misdemeanors (see Hundley, et.al. 2012). For many reasons, these cases are not included here.⁷ While there are potential difficulties in the database, the author made every effort to double check facts, minimize factual errors, and obtain as many verifiable specifics as possible.

³ These concerned alleged attacks by dogs (two cases), a bear, and an alligator. Two of these cases actually passed through SYG court hearings.

⁴ To illustrate, many Florida jurisdictions identify only two races: white and black. Categories for Hispanics, Native Americans, Asians, etc., simply do not exist.

⁵ For instance, several sources were utilized to check for criminal backgrounds, but any individual whose Florida records were clean could very well have an out-of-state record.

⁶ Some of the cases in question go back to 2006. The legal reasons for these delays are varied. Two, in fact, are situations in which defendants have been declared incompetent to stand trial. Their hearings cannot continue until legal competence is ascertained, a process which can be indefinite.

⁷ Hundley, et. al. (2012) report large difficulties in acquiring state-wide information on these minor case SYG motions. More to the point, though, minor cases should not be included in SYG investigations virtually by definition. Stand Your Ground *inherently* involves such elements as the threat/use of *deadly* force, imminent threat of *death or great bodily harm*, etc. These elements more than imply alleged offenses of the most serious sort. If, indeed, SYG is being used in misdemeanor defenses, it would be further support for the contention that the law is ambiguous and has wandered even further from its original legislative intent.

Previous SYG Reports: Pertinent Findings

As stated earlier, the express purpose of the Stand Your Ground law was to provide decent, upstanding citizens an avenue of additional protection from felonious assault wherever they have a legal right to be. As the author has reported earlier (McCormick 2014a; 2014b), this general scenario has certainly occurred. Claimants of SYG and their alleged assailants were strangers in close to a third of all incidents, and defense against forcible felonies entailed about a quarter of the cases. A claimant's success was significantly higher in incidents triggered by self-defense, when the assailant was armed and/or committing a crime, and when the claimant was injured in the incident. While not significant, a claimant tended to be more successful if the SYG event occurred on his/her property. Further, successful SYG claims significantly involved assailants who were male, young, and/or non-White. These are precisely the categories of individuals the literature reports as differentially involved in criminal acts of violence (see, for example, Bloch and Geis 1962; Clinard and Meier 2004; Wickman and Whitten 1980).

However, a significant portion of the SYG cases studied diverged from its presumed legislative intent. Typically, claimants and assailants had some sort of primary, quasi-primary, or secondary relationship prior to the SYG confrontation. At least one half of both claimants and assailants had criminal records, including, for nearly a third of both, crimes of violence. The usual trigger for a SYG event was an argument or dispute of some type. Alcohol was an incident facilitator in about one-fourth of the cases. Often, the confrontation was uneven, as two-thirds of the alleged assailants were unarmed, but the claimant usually was. In fact, six out of ten claimants used hand guns. Unsurprisingly, then, the most likely result of a SYG confrontation for more than half of the alleged assailants was death. Only about ten percent of the assailants escaped unharmed.

Excluding those cases in which a SYG ruling has yet to be made and those cases involving animal "assailants," individuals claiming a Stand Your Ground defense were successful in 182, or six out of ten (60.3%) cases. Decision appeals have been relatively rare, less than ten percent of the studied cases. In those cases where appellate decisions have been rendered, claimants were favored in about half.

Findings on Stand Your Ground Elements

Mindful of the elements required for the justifiable use of deadly force, as outlined in this report's introduction, data is available on the extent to which these elements factored into SYG decisions. Such data is examined here.

The crux of Stand Your Ground is the removal of the “duty to retreat” element. Table 1 examines the success of SYG for those claimants who did and did not have an opportunity to escape the confrontation. Note that 162 claimants, more than half (53.6%), unmistakably had an opportunity to avoid violence by leaving. As may be seen, claimants who did not have an opportunity to retreat

Table 1. SYG Success versus Claimant Opportunity to Retreat, by Case

Retreat Opportunity	SYG Successful	SYG Unsuccessful	Total
Yes	83 (51.2%)	79 (48.8%)	162
No	55 (82.1%)	12 (17.9%)	67
Disputed/Unknown	46 (63.0%)	27 (37.0%)	73
Total	184 (60.9%)	118 (39.1%)	302
$\chi^2 = 19.131$		$p < .05$	

had significantly the greatest rate of success with SYG defenses, in more than four out of five instances. Where opportunity to retreat was disputed or unknown, claimant success was less likely, but still in the neighborhood of two-thirds (61.6%). Ironically, successful defenses were least likely for those claimants who stood their ground even though they had a clear opportunity to exit the incident. Still, they were successful in half of such situations. Clearly, then, while the duty to retreat is no longer an element in the justifiable use of deadly force, it is a factor that is considered by those legal actors⁸ who are responsible for SYG decisions. It is quite possible, perhaps probable, that when claimants chose to remain in a supposedly volatile situation rather than utilizing an available escape, legal actors questioned the imminence of the threat and/or the degree of the danger.

⁸ Legal actors that have made Stand Your Ground decisions include the police, prosecutors (including the State Attorney’s Office), judges (both trial and appellate), grand juries, and trial juries.

The Florida *Statutes* clearly state that a Stand Your Ground defense is not normally available if the claimant was the one to “initially provoke the use of force.” As shown in Table 2, in 70 (23.2% or nearly one-fourth) of the SYG incidents studied, it was the claimant who initiated the chain of events leading to the violent confrontation. Certainly, claimant rate of success was significantly higher in those instances in which it was the assailant who initiated matters. This was true in over three-fourths of assailant-initiated episodes, while claimant

Table 2. SYG Success versus Confrontation Initiator, by Case

Initiator	SYG Successful	SYG Unsuccessful	Total
Claimant	31 (44.3%)	39 (55.7%)	70
Assailant	112 (78.3%)	31 (21.7%)	143
Disputed/Unknown	41 (46.1%)	48 (53.9%)	89
Total	182 (60.9%)	118 (39.1%)	302
$\chi^2 = 34.573$		$p < .05$	

success was well under fifty percent when he/she was the initiator or when the initiator was disputed or unknown. Nonetheless, in 31 situations, or about one in ten of the cases studied, a Stand Your Ground defense was successful even though it was the claimant who touched off the train of events leading to the use of deadly force.

It was found in a number of cases that not only did the claimant start the confrontation, he/she actually continued the affair by actively pursuing the alleged assailant. Certainly, as Table 3 below confirms, pursuit of one’s assailant does not assist a claimant’s assertion of Stand Your Ground. Claimants who did not pursue, but stood their ground, were significantly more likely to succeed with their defenses, about seventy percent of the time. In those cases where the claimant did pursue the assailant, or that issue was disputed or unknown, success rates were substantially lower (about 45% and 55%, respectively). In other words, it is one matter to stand your ground, but it is quite another to actively pursue your assailant, thus continuing (perhaps unnecessarily) the altercation. However, it is important to note that forty claimants (13.2% of the total cases) successfully employed the SYG defense even though they chose to continue the incident by active pursuit of the alleged assailant.

Table 3. SYG Success versus Claimant Pursuit of Assailant, by Case

Claimant Pursuit	SYG Successful	SYG Unsuccessful	Total
Yes	40 (46.0%)	47 (54.0%)	87
No	114 (70.4%)	48 (29.6%)	162
Disputed/Unknown	30 (56.6%)	23 (43.4%)	53
Total	184 (60.9%)	118 (39.1%)	302
$\chi^2 = 14.653$		$p < .05$	

Active pursuit of the assailant may or may not qualify as incident provocation, depending upon the precise circumstances. The provocation question ultimately rests on which principal involved was the person who initiated the threat or use of force. Table 4 demonstrates that when the assailant clearly initiated the violence, the success of a Stand Your Ground defense was almost a virtual lock at 85.6%. When the initiator was disputed or unknown, SYG success fell to forty percent and, as would be expected, success was quite low when it was the claimant who first used force. Yet, in one out of four instances when it indeed was the claimant who struck first, his/her SYG defense still prevailed. Stated another way, in one out of twenty cases, individuals claimed self-defense successfully even though they were the ones to initiate the violence.

Table 4. SYG Success versus Violence Initiator, by Case

Initiator	SYG Successful	SYG Unsuccessful	Total
Claimant	17 (26.6%)	47 (73.4%)	64
Assailant	131 (85.6%)	22 (14.4%)	153
Disputed/Unknown	36 (42.4%)	49 (57.6%)	85
Total	184 (60.9%)	118 (39.1%)	302
$\chi^2 = 83.257$		$p < .05$	

If, in a significant minority of cases, an SYG claimant’s defense prevailed even if he/she had instigate the confrontation, actively pursued the assailant, and/or was the individual who initiated the violence, the element of “imminent threat” must be addressed. The author’s previous reports (McCormick 2014a; 2014b) found that the majority of alleged assailants (about two-thirds) were unarmed. Also in about two-thirds of the cases, the claimant possessed a firearm, usually a hand gun. In fact, there were 64 cases in which the claimant had a firearm and the assailant was unarmed, yet the SYG claim of self-defense was successful (21.2% of all cases). When an armed SYG claimant faced an unarmed alleged assailant, the problem of imminent threat should certainly be raised. Table 5 shows the proportion of these cases in which the claimant *clearly*: 1) had an opportunity to retreat, 2) instigated the confrontation, 3) pursued the assailant, and/or 4) initiated the use of force.

Table 5. Successful Armed-with-Guns Claimants versus Unarmed Assailants, by SYG Element

	Opportunity to Retreat?	Instigated Confrontation?	Pursued Assailant?	Initiated Use/ Threat of Force?
Yes	40 (62.5%)	15 (23.4%)	18 (28.1%)	9 (14.1%)
No/Disputed	24 (37.5%)	49 (76.6%)	46 (71.9%)	55 (85.9%)
Total	64 (100%)	64 (100%)	64 (100%)	64 (100%)

The majority of these successful SYG claimants, almost two-thirds, had an opportunity to quit the scene, but they chose not to do so. Even though, given their possession of firearms, they had the upper hand in the situation, the law entitled them to stay put. However, some of these claimants were successful, though armed with deadly weapons, even when they instigated the incident,

actively pursued the assailant, and/or set the violence in motion. If these actions were a part of the incident, the element of “imminent threat” must be called into question.⁹

One final question remains. It is apparent that a significant minority of Stand Your Ground claimants are successful even though the circumstances of the violent event are divergent from the intent of the law. If this is the case, which legal actors are making these problematic decisions? As shown in Table 6, the answer is that the responsibility is diffused throughout the legal process. While prosecutors and SYG-hearing judges have made the majority of these

Table 6. Legal Actors Making Claimant-Favorable SYG Decisions in Questionable Incident Circumstances

Legal Actor	Opportunity to Retreat?	Instigated Confrontation?	Pursued Assailant?	Initiated Use/Threat of Force?	Overall Favorable Decisions
Police (no charge)	14 (16.9%)	3 (9.7%)	4 (10.0%)	2 (11.8%)	32 (17.3%)
Prosecutor (nol pros)	29 (34.9%)	9 (29.0%)	17 (42.5%)	7 (41.2%)	65 (35.1%)
Grand Jury (no bill)	1 (1.2%)	0 (-----)	0 (-----)	0 (-----)	3 (1.6%)
Judge (SYG decision)	24 (28.9%)	13 (41.9%)	10 (25.0%)	3 (17.6%)	59 (31.9%)
Trial Judge/Jury (not guilty)	15 (18.1%)	6 (19.4%)	9 (22.5%)	5 (29.4%)	26 (14.1%)
Total	83 (100.0%)	31 (100.0%)	39 (100.0%)	17 (100.0%)	185 (100.0%)

⁹ To be sure, there are instances where, indeed, an unarmed assailant can pose an imminent danger to an individual who is armed. For example, Gardiner and Anderson (1996:107-9) cite the case of *Mullins v. Pense*. Briefly, Mullins, a very large man, was a belligerent customer in a bar who threatened Pense, a very small and crippled bartender. When Mullins lunged over the bar, Pense shot him once, but Mullins continued his aggression. Pense shot him several more times. Mullins survived and sued Pense. The Louisiana courts ruled that Pense was certainly in imminent and serious danger and (given his position behind the bar) had no opportunity to retreat. Given the continued aggressiveness of the assailant, Pense was quite justified in firing the weapon several times.

determinations, the police and trial judges/juries are significant players as well. Note that the proportions of such judgments are roughly comparable to the overall total of favorable SYG rulings. And it must be pointed out that legal actors communicate with one another. Before making charges, the police often consult with local prosecutors. Both may consult with the State Attorney's Office. Prosecutors work with Grand Juries and engage in pre-trial conferences with judges. Judges instruct juries, and their decisions are reviewable through the appellate court process. This signifies that the Stand Your Ground law's openness to interpretation is inherent throughout the criminal justice system.

Summary and Discussion

The findings presented here show that there is substance for the controversies surrounding Florida's Stand Your Ground law. The law was intended to further protect honest citizens from unwarranted threatening situations wherever they have a legal right to be. However, it has, with some frequency, been invoked by individuals with criminal pasts, often for crimes of violence. Further, the majority of SYG incidents were the culminations of arguments and disputes (sometimes fueled by alcohol) between principals who knew one another beforehand, not, as the law envisioned, between a citizen and a felonious assaulter. Further, more often than not, armed claimants squared off against unarmed alleged assailants.

By far, claimants who had no opportunity to retreat were more successful with their SYG defenses than those who did. But claimants with opportunity to retreat were still successful in half of such cases. Of course, opportunity to retreat is, by definition, no longer an element of self-defense, but claimants have a much better case if the use of self-defensive force was their only alternative given the confrontational situation. But failure to retreat is one thing; initiating the SYG incident, actively pursuing the assailant, and/or striking first are quite another. Yet, in a significant minority of cases, a claimant who acted to provoke, rather than ameliorate, the situation was nonetheless freed from legal blame via a Stand Your Ground defense.

Such divergent SYG rulings have been made by legal actors at each and every stage of the criminal justice process—the police, prosecutors, judges, Grand Juries, and trial juries. This indicates that there is rather ambiguously wide latitude in how the law is being interpreted and enforced. In part, this is because one of the critical essential elements to the justifiable use of force in self-defense has been eliminated—the duty to retreat. Hence, more reliance must be placed on the other elements, a *reasonable* belief that one is facing *imminent* and potentially *lethal* threat.

The term *reasonable* has a legal meaning. It is “what a person of ordinary prudence would exercise in similar circumstances” (Oran 1983:351). It is a supposedly objective, not subjective, test asking what most people would do in the same situation (Reid 2004:143).¹⁰ Presumably, in a volatile situation, most people would choose to flee if that option were available. But Stand Your Ground removes that factor from the equation. What most people would do next is up in the air, a more subjective decision. This can be stated another way. If a person is faced with an imminent and lethal threat, the choices are basically fight or flight. Before Stand Your Ground, flight had to be out of the question. Most reasonable people, if they wanted to survive the situation, would probably choose “fight.” However, by eliminating the requirement to retreat, some reasonable people might choose to fight while other reasonable people might choose to run.

Similarly, *imminent* and *lethal* threat takes on added importance. With the Castle Doctrine, such threat is considered inherent with the illegal presence of an intruder (see Dix and Sharlot 1980:555-6). However, if one can now stand up to a threat rather than leaving, matters change. What is considered a dangerously lethal threat *and* that threat’s immediacy might very well become more loosely delineated. That is, if a person is facing a potentially volatile situation, but remains even though given the opportunity to exit, how immediate is that situation? Or how serious? The imminence and dangerousness of the threat, therefore, also become more subjective questions.

Thus far, the legal system has yet to address these ambiguities. There have been some rulings, both trial and appellate, that have placed some limits on Stand Your Ground (see McCormick 2014a). For example, fending off attacking animals is not covered by the law, nor does the law apply to law enforcement officers (whose use of force is covered by other statutes), nor is the law retroactive to incidents occurring before its effective date. But, as stated earlier, there have been very few appeals of SYG cases, mostly on rather narrow questions (such as inadequate jury instructions). Nor has the legislature acted to make the law more specific, in spite of urgings from various quarters to do so.¹¹

¹⁰ One commentator remarked that one might construe the terms “objective” and “subjective” in absolute terms. This is not the case. Rather, the author views “objective” and “subjective” as end points on a continuum. Therefore, the reasonable man test is *supposed* to be based upon what a judge or jurors believe an ordinary person would do in a particular situation. Clearly, though, these legal actors sometimes arrive at another conclusion.

¹¹ In the 2014 legislative session, a bill was passed and signed into law by Governor Scott, which expands the Stand Your Ground law to include the firing of warning shots, thus broadening, not limiting, the scope of the statute (see Cotterell 2014).

It is not the intent of this article to claim that the purpose of Florida's Stand Your Ground law has not been served. As pointed out in the introduction, there are many, many instances in which the law's goal has been met. Rather, the object here is to demonstrate that the law's structure has created unintended ambiguities in its interpretation. The legal actors charged with the law's implementation have yet to resolve these uncertainties.

SYG has turned the notion of justified self-defense from a more objective interpretation of the law by police, prosecutors, judges, and juries into a more subjective one.¹² By eliminating the duty to retreat, claimants merely have to state, "I felt threatened," to introduce substantial vagueness into legal proceedings. If the purpose of a law's enforcement is to clarify behavioral boundaries, this goal has not yet been fully realized.

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¹² The author is indebted to Dr. Michelle J. McCormick for this observation.

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