CRIMINAL LAW AND PUBLIC POLICY

In 2005, Florida passed a Castle Doctrine law, also popularly referred to as the stand your ground law, which expands the right of self-defense. In the last five years, roughly thirty-one states have adopted some or all provisions of the Florida law. These laws are inspired by the common law doctrine that authorizes individuals to employ deadly force without the obligation to retreat against individuals unlawfully entering their home who are reasonably believed to pose a threat to inflict serious bodily harm or death. Individuals under the Castle Doctrine laws possess the right to stand their ground whether they are inside the home or in the curtilage outside the home. The Florida stand your ground law extends the right to stand your ground to individuals outside the home.

The National Rifle Association (NRA) has been at the forefront of the movement to persuade state legislatures to adopt these Castle Doctrine laws. The NRA argues that it is time for the law to be concerned with the rights of innocent individuals rather than to focus on the rights of offenders. The obligation to retreat before resorting to deadly force according to the NRA restricts the ability of innocent individuals to defend themselves against wrongdoers. The law of self-defense places victims in the position of having to make a split-second decision about whether they are obligated to retreat and whether they are employing proportionate force. The preamble to the Florida law states that "no person . . . should be required to surrender his or her personal safety to a criminal . . . nor . . . be required to needlessly retreat in the face of intrusion or attack." In the words of the spokesperson for the National Association of Criminal Defense Lawyers, "Most people would rather be judged by 12 (a jury) than carried by six (pallbearers)."

The Florida Castle Doctrine law modified the state's law of self-defense and has three central provisions.

Public place. An individual in any location where he or she "has a right to be" and who is not engaged in criminal activity is presumed to be justified in the use of deadly force or threatened use of deadly force and has no duty to retreat and has the right to stand his or her ground. The individual must reasonably believe that such force is required to prevent imminent death or great bodily harm or to prevent the imminent commission of a forcible felony to himself or herself or to another. Three questions are involved. Did the defendant have a right to be where he or she was located? Was the defendant engaged in lawful activity? Was the defendant in reasonable fear of death or great bodily harm?

Home. Individuals are presumed to be justified in using deadly force against intruders who forcefully and unlawfully enter their residence or automobile. In the past under the Florida law, a jury when confronted with a claim of self-defense by an individual in the home who employed deadly force was asked to decide whether the defendant reasonably believed that an intruder threatened death or serious bodily injury. Under the new Florida law, the