

## “Shoot First” Laws

In recent years, the gun lobby has promoted the enactment of so-called “shoot first” laws, dangerous alterations to traditional self-defense principles that generally: 1) presume that a person’s actions in using deadly force in self-defense were reasonable; 2) expand the use of deadly force in self-defense to locations outside the home; 3) broaden the situations in which a person can respond with deadly force to those where no imminent danger exists; and 4) immunize persons acting in self-defense from criminal prosecution and civil liability if they injure or kill anyone, including innocent bystanders, while acting in self-defense.

Thus far, more than 20 states have heeded the gun lobby’s call and adopted “shoot first” laws, also referred to as “no retreat,” “stand your ground,” or “make my day” laws.<sup>1</sup> These legislative changes will endanger public safety, interfere with law enforcement investigations and prosecutions, and allow persons who negligently or recklessly kill others to escape criminal and civil liability.

Under traditional common law principles, the use of deadly force in self-defense is lawful only in response to a threat of death or serious bodily injury.<sup>2</sup> The amount of force used in response to that threat must be force that a “reasonable person” would use; a defendant using such force in self-defense would have the burden at trial to demonstrate that his or her defensive actions were reasonable.<sup>3</sup> Under the doctrine of justifiable homicide, a defender must retreat as much as practicable in a threatening situation before using deadly force in self-defense.<sup>4</sup> By requiring a defender to avoid a violent confrontation by retreating rather than

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<sup>1</sup> Alabama (Ala. Code § 13A-3-23); Alaska (Alaska Stat. §§ 09.65.330, 11.81.335, 11.81.350); Arizona (Ariz. Rev. Stat. Ann. §§ 13-411, 13-418, 13-419, 13-420); Colorado (Colo. Rev. Stat. §§ 18-1-704, 18-1-704.5); Florida (Fla. Stat. Ann. §§ 776.012, 776.013, 776.031, 776.032, 776.041); Georgia (Ga. Code Ann. §§ 16-3-21, 16-3-23, 16-3-23.1, 16-3-24, 16-3-24.2); Idaho (Idaho Code §§ 6-808; 18-4009); Indiana (Ind. Code Ann. §§ 35-41-3-2, 35-41-3-3); Kansas (Kan. Stat. Ann. §§ 21-3211, 21-3212); Kentucky (Ky. Rev. Stat. Ann. § 503.080); Louisiana (La. Rev. Stat. Ann. § 14:20); Michigan (Mich. Comp. Laws §§ 600.2922b, 600.2922c, 768.21c, 780.951, 780.961, 780.971 – 780.974); Mississippi (Miss. Code Ann. § 97-3-15); Missouri (Mo. Rev. Stat. §§ 563.031, 563.041, 563.074); North Dakota (N.D. Cent. Code §§ 12.1-05-07, 12.1-05-07.1, 12.1-05-07.2); Oklahoma (Okla. Stat. tit. 21, § 1289.25); South Carolina (S.C. Code Ann. §§ 16-11-410 – 16-11-450); South Dakota (S.D. Codified Laws §§ 22-5-9, 22-16-34, 22-16-35, 22-18-4); Tennessee (Tenn. Code Ann. §§ 39-11-611, 39-11-622); Texas (Tex. Penal Code Ann. §§ 9.31, 9.32; Tex. Civ. Prac. & Rem. Code Ann. § 83.001); Utah (Utah Code Ann. § 76-2-405); and West Virginia (W. Va. Code § 55-7-22).

<sup>2</sup> Stuart P. Green, *Article: Castles and Carjackers: Proportionality and the Use of Deadly Force in Defense of Dwellings and Vehicles*, 1999 U. Ill. L. Rev. 1, 2 (1999).

<sup>3</sup> 40 Am. Jur. 2d *Homicide* § 156. Generally, the standard for determining reasonableness of a criminal defendant’s use of deadly force in self-defense is an objective one: defendant’s apprehension of danger and belief of necessity which will justify killing in self-defense must be a reasonable apprehension of serious bodily harm or threat of life, such as a reasonable person would, under the circumstances, have entertained. *Id.* A defendant must not only have entertained the belief, but there must have been reasonable grounds for the belief that the defendant was in imminent danger of loss of life, or of suffering serious bodily harm, at the hands of the person against whom deadly force was used. If the defendant acts in good faith and with reasonable judgment and discretion, he or she will be excused. 40 Am. Jur. 2d *Homicide* § 155.

<sup>4</sup> Green, *supra* note 2, at 9.

killing an attacker, the doctrine encourages individuals to find non-deadly solutions to such confrontations.<sup>5</sup>

Common law governing the use of deadly force in self-defense or defense of other persons in the home, commonly known as the “castle doctrine” (based on the adage that a person’s home is his or her “castle”),<sup>6</sup> provides a person with the right to use reasonable force, including deadly force, to protect against an intruder, without any duty to retreat.<sup>7</sup> Under this doctrine, the defender does not actually need to be threatened with death or serious bodily injury, or even perceive such threats, to use deadly force against an intruder. The rationale behind this doctrine is that a person should not be required to face a greater danger by retreating than if he or she remained inside the home.<sup>8</sup>

“Shoot first” laws blur the differences between these self-defense doctrines, and significantly expand them, posing a threat to public safety. According to the National District Attorneys Association, “shoot first” laws generally replace the “reasonable person” standard at common law for the use of deadly force in self-defense, which placed the burden on a defendant to show that his or her actions in self-defense were reasonable, with a “presumption of reasonableness” that shifts the burden of proof to the state to prove beyond a reasonable doubt that the person using deadly force did not have a reasonable fear of imminent death or serious bodily injury.<sup>9</sup>

Prosecutors are concerned that because the presumption forces them to prove a negative at trial, the presumption is in effect an “unrebuttable” one.<sup>10</sup> Such a situation hampers prosecutors from considering the actual facts that show whether the force used was reasonable or unreasonable, and paralyzes prosecutions by eliminating prosecutorial discretion in evaluating whether the use of deadly force was justified.<sup>11</sup>

“Shoot first” laws also often expand the use of deadly force in self-defense to locations outside the home.<sup>12</sup> Allowing deadly force to be used in self-defense in public areas, with no duty to retreat, creates unprecedented and significant risks of death or injury to innocent third parties and law enforcement. Coupled with the “presumption of reasonableness,” the new law

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<sup>5</sup> Steven Jansen & M. Elaine Nugent-Borakove, National District Attorneys Association, *Expansions to the Castle Doctrine: Implications For Policy and Practice* 7 (2008), available at <http://www.ndaa.org/pdf/Castle%20Doctrine.pdf>; Liliana Segura, “Justifiable Homicides” Are on the Rise: Have Self-Defense Laws Gone Too Far?, AlterNet, Nov. 14, 2008, available at <http://www.alternet.org/rights/107001>.

<sup>6</sup> *Id.*

<sup>7</sup> Jansen, *supra* note 5, at 3.

<sup>8</sup> *Id.*, Green, *supra* note 2, at 9.

<sup>9</sup> Jansen, *supra* note 5, at 6.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See Fla. Stat. Ann. §§ 776.012, 776.013(3), 776.031. In 2005, Florida became the first state to drastically alter self-defense law, adopting one of the most expansive “shoot first” laws. Since Florida’s revised laws represent the broadest – and most dangerous – of changes to traditional self-defense law, they are used as a primary illustration of “shoot first” laws in this summary. See also Mich. Comp. Laws § 780.972.

may encourage people to use deadly force where, in the past, they otherwise would not have done so, escalating verbal arguments into deadly confrontations.<sup>13</sup>

“Shoot first” laws also generally allow a person to respond with deadly force in situations where no imminent danger exists to the “defender.”<sup>14</sup> Under these laws, deadly force may be used even after any immediate danger has ceased, when a person mistakenly believes an unlawful act has occurred, or where only property is threatened.<sup>15</sup>

Finally, “shoot first” laws commonly provide immunity from criminal prosecution and civil liability, sometimes without exception, if a defender harms or kills anyone, including innocent bystanders, while acting in accordance with the revised self-defense laws.<sup>16</sup> Even persons acting in self-defense in a negligent or reckless manner who kill or injure innocent third parties are free from prosecution or civil liability for their actions. These laws become particularly egregious when one considers that law enforcement officers, professionals who are well-trained in the use of deadly force, do not have such “blanket immunity” for their actions in the line of duty.<sup>17</sup>

Law enforcement and prosecutors have additional concerns about “shoot first” laws:

- The laws increase the burdens upon law enforcement and tax already strained resources when determining if a claim of self-defense is justified.<sup>18</sup>
- Law enforcement has expressed doubts that the modified laws will successfully deter crime.<sup>19</sup>
- Creation of a “presumption of reasonableness” may act to limit prosecutorial discretion in deciding whether or not to file charges, which ultimately deprives triers of fact (judges and juries) the ability to pass judgment on individuals who negligently or recklessly use deadly force.<sup>20</sup>
- Claims of self-defense likely will increase and create another burden on prosecutors and law enforcement, which is especially problematic because criminal defendants will use the expanded self-defense laws to justify their otherwise criminal acts.<sup>21</sup>

For additional information on the dangers of “shoot first” laws and the fight against them, visit [Shootfirstlaw.org](http://Shootfirstlaw.org) and the [Coalition to Stop Gun Violence’s Shoot First Laws page](#).

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<sup>13</sup> Jansen, *supra* note 5, at 6-7.

<sup>14</sup> See Fla. Stat. Ann. § 776.031.

<sup>15</sup> *Id.* See also Idaho Code § 18-4009, and Jansen, *supra* note 5, at 6.

<sup>16</sup> See Fla. Stat. Ann. § 776.032, Ga. Code Ann. § 16-3-24.2, W. Va. Code § 55-7-22(d).

<sup>17</sup> Jansen, *supra* note 5, at 7.

<sup>18</sup> *Id.* at 9.

<sup>19</sup> *Id.* at 10.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 11.