

Florida, Self Defense and

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You're in your bedroom asleep, and you're startled awake by a noise.

It's breaking glass -- and you now hear someone climbing through the window. You feel you're in danger. What can you do, legally? Can you knock the intruder unconscious with a kick to the head? Break bones with a joint lock? Defend yourself with a lethal strike to the neck? What are the rules if you kill the intruder?

In 2005, Florida took a great legal leap into the murky waters of deadly force and emerged with a significantly different rule book.

By law, using deadly force in your home or car went from being an arguable option, dependent on circumstance, to an absolute, unquestionable right. The new law is said to be one of the most "forgiving" in the country governing the justifiable use of deadly force. No longer are citizens bound by a law based --on the Castle Doctrine; a concept commonly called Stand Your Ground became the underlying principle in Florida law governing the use of lethal force.

The Castle Doctrine, as you might guess, comes from the precept that "a man's home is his castle." It's a principle from English common law, said to go back to the 12th century. Under this doctrine, you have the right to defend yourself if someone enters your home without permission.

You have no obligation to retreat -- retreat being a central issue in most self-defense laws. So under the old law, you could employ lethal force only if you "subjectively" believed you faced "great bodily harm" or death. This means that if someone entered your house, you killed the person, and he turned out to be an unarmed burglar or a disoriented older neighbor, you might have been called upon to convince the authorities you feared for life or limb. Otherwise you might have been arrested and/or sued.

Let's go back to our hypothetical martial arts scenario under the old law: You hear someone walking toward the bedroom. You grab a tambo from the closet and wait behind the door. The intruder starts to enter the room. As he enters, you see a reflection from something in his hand -- it could be a knife -- so you

strike him in the head with the short stick as hard as you can. He dies. The shiny thing in his hand turns out to be a silver ashtray he had taken from the living room.

He shouldn't have been there, true, and the tray might have used as a weapon. But was your fear enough to warrant an instant death penalty by tambo? As a martial artist, it

might have gotten more complicated. Aren't you trained in self defense? Couldn't you have used a non-lethal, empty hand technique to protect yourself? Why didn't you run? (More specifically, isn't that one of your style's five principles of self defense?)

When the law changed, questions like these became moot. With Stand Your Ground, the law gives you a great deal more leeway for taking the life of an intruder.

"Florida's amended statute was a monumental shift in the law and a true game-changer in the law of self-defense," wrote Florida attorney Phillip E. Gosin in a series of articles published last year in Martial Arts Success Magazine.

Historically, Stand Your Ground had nothing to do with personal self defense. The phrase is believed to have originated in medieval military doctrine for foot soldiers in battle: fight, stand your ground, hold on to your lances, don't retreat -- even if the other guys are armored, swinging swords and riding horses. It was an order, not an option.

The new law widened your options, in three significant ways, when it comes to the justifiable use of deadly force.

First, now, by law, if anyone "unlawfully and forcefully "enters your residence, dwelling, attached structure or occupied car, without permission -- just by his being there -- you can assume there's a "reasonable fear of imminent peril of death or great bodily harm" and you can kill the intruder. Your decision is irrefutable; you will not -- actually cannot -- be arrested or sued for your actions.

This is a big change. Now, by just forcibly entering without your permission, the intruder might have

*See important note on page 17.

the Use of Deadly Force

forfeited his life. By being in your house, he is presumed to be dangerous and you can use deadly force without question.

The second big change is that the law now extends the principle to your car and dwelling attached to your home. If he enters either of these, it's okay to kill him - if you decide that's the way you want to handle the situation.

In such situations, your action is irrefutable. No arrest. No lawsuit. So, as they say in the movies, it's a righteous kill.

According to Goss, "The test is terrifyingly simple; if a person enters your home or vehicle without permission, you may kill them."

The new law has been controversial and divisive.

Then Governor Jeb Bush signed the measure into law on April 26, 2005, calling it a "common-sense, anticrime issue." He told the New York Times "(that) to have to retreat and put yourself in a very precarious position defies common sense."

Marion Hammer, the National Rifle Association's (NRA) Tallahassee based lobbyist, said the measure was needed to prevent authorities from harassing law-abiding people with unwarranted arrests. "The law was written very carefully and it means what it says: You have a right to protect yourself," she told the St. Petersburg Times last October.

Vocal opponent, Sarah Brady (whose husband James was shot in the head during an attempt on President Regan's life), founder of the Brady Center to Prevent Handgun Violence calls the law "a license to kill."

The biggest concern for critics is the revised statute opens a very dangerous, lethal door, not even opened for law enforcement, and that there will be inevitable, unintended consequences -- people getting killed for a stupid mistake, or for being in the wrong place at the wrong time. Some examples cited by Ross:

A neighborhood kid sneaks into your garage to steal your lawnmower for some quick cash. If you catch him in there, you can kill him -- for a lawnmower. A drunk, homeless panhandler reaches through your car window asking for spare change. Legally, she's as good as dead -- for being dumb, drunk and homeless.

Leon County State Attorney Willie Meggs, president of the Florida Prosecuting Attorneys Association has called it "the Shoot Your Avon Lady Law."

The third big change in the statute is perhaps the most controversial. The law now says if you are attacked anywhere and can provide "proof of (your) subjective fear" you have the right to stand your ground and meet force with force, including deadly force, if you reasonably believe it was necessary to prevent death or great bodily harm ..."

Anywhere. That could include a street corner, a bar, even a grocery store.

Unlike being in your home, you can't presume danger just because there's a potential assailant around and you feel threatened. In these situations, you have to prove the threat was serious enough to warrant lethal self defense.

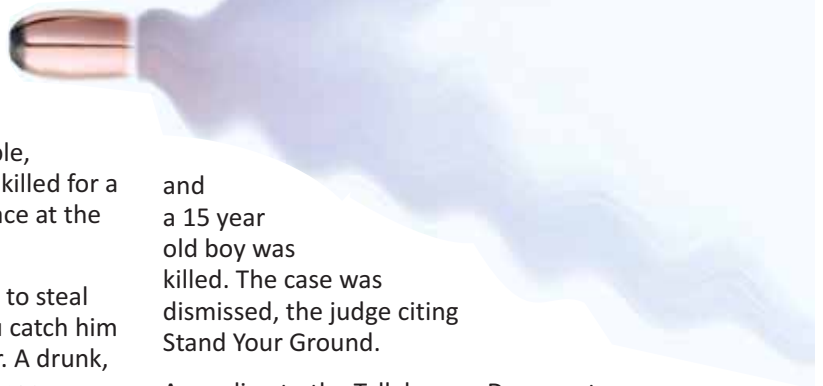
"What in the hell is our state government doing passing a law encouraging our citizens to solve disputes with guns?" Arthur Hayhoe, Executive Director of the Florida Coalition to Stop Gun Violence said to the St. Petersburg Times. "This is the right-to-commit-murder law."

Advocates say the law, is working as intended, protecting innocent people from prosecution. But opponents say there are a growing number of deadly incidents -- the feared unintended consequences.

For instance, in Tallahassee, two rival gangs got in a gunfight. Some 30 shots were fired

and a 15 year old boy was killed. The case was dismissed, the judge citing Stand Your Ground.

According to the Tallahassee Democrat the judge later said that the law created an environment "very much like the Wild West."



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