

**CAN LOUISIANA’S SELF-DEFENSE LAW
STAND ITS GROUND?: IMPROVING THE
STAND YOUR GROUND LAW IN THE
MURDER CAPITAL OF AMERICA**

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I. INTRODUCTION

For three years, Air Force Sergeant Jason Rolls was forced to await a decision that would determine whether he would spend the next forty years in jail or walk free.¹ Rolls believed that under Louisiana's "Stand Your Ground" law—which expressly allows individuals to use deadly force for self-protection without legal repercussion—he had the legal right to employ deadly force to protect himself.² With that belief, Rolls shot the man who entered his Louisiana home, threw Rolls's new wife to the ground, and tackled Rolls on his own living room floor.³ Jason Rolls was forced to spend three years either behind bars or confined to his air force base, awaiting trial for doing what he believed was necessary to protect himself and his family.⁴ Although eventually acquitted of any crime, Rolls was unjustly forced to sacrifice three years of his life for an act of necessity, legalized by a Louisiana statute.⁵

During the same time period that Jason suffered with the uncertainty of his future, twenty-one-year-old Byron Thomas walked free after shooting and killing an unarmed eighth grade boy who was in a car driving away following an oral altercation.⁶

1. Kristin Davis, *Staff Sgt. Acquitted of Manslaughter*, AIR FORCE TIMES (May 13, 2013, 6:00 AM), available at 2013 WLNR 14020788; see also Jason Brown, *Man seeks freedom: Application of justifiable homicide at issue*, ADVOCATE, May 21, 2012, available at 2012 WLNR 10729578 (discussing that a year after the incident, Jason Rolls was charged by a grand jury with manslaughter, which carries a sentence of up to forty years under Louisiana law).

2. LA. REV. STAT. ANN. § 14:20(A)(4)(a) (2012) ("A homicide is justifiable . . . when committed by a person lawfully inside a dwelling . . . against a person . . . who has made an unlawful entry into the dwelling . . . and the person committing homicide reasonably believes that the use of deadly force is necessary to . . . compel the intruder to leave the premises . . .").

3. Davis, *supra* note 1 (discussing that, in an interview, Jason Rolls justified his actions, stating "[w]hen Hall 'attacked my wife and then me, it was pretty much a flight-or-fight situation.'").

4. *Id.*; see also Erin Steuber, *Jason Rolls bonded out*, KATC.COM (Aug. 13, 2012, 5:30 PM), <http://www.katc.com/news/jason-rolls-bonded-out/>.

5. Davis, *supra* note 1.

6. Jarvis DeBerry, *Does 'standing your ground' in Louisiana mean you can shoot a fleeing suspect?: Jarvis DeBerry*, TIMES PICAYUNE (Mar. 25, 2012, 8:45 AM), http://www.nola.com/opinions/index.ssf/2012/03/standing_your_ground_in_louisiana.html.

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Despite Thomas's lack of any reasonable belief of imminent danger, Thomas was neither arrested nor charged and currently faces no repercussions for the murder of the boy.⁷

This inconsistent application of Stand Your Ground laws has generated tremendous controversy and media attention in Louisiana and other states with similar laws.⁸ After a number of incidents generating intense public controversy about the impact of these laws,⁹ it appears as though nearly everyone in the nation has a strong opinion about Stand Your Ground laws.¹⁰ Nonetheless, the intricacies of these laws and the actual impact they have on the states where they are enacted are not widely known.¹¹

The differing opinions regarding these self-defense laws can be seen by their varying nicknames: "Stand Your Ground Laws," "Make My Day Laws," and even "Shoot First [Ask Questions Later] Laws."¹² These self-defense laws, which will be referred to as Stand Your Ground laws for purposes of this Comment, eradicate the common law duty to retreat before resorting to the

7. DeBerry, *supra* note 6.

8. See Thadeus Greenson, *Gallegos weighs in on 'stand-your-ground' laws: Amid national controversy, Humboldt County DA supports California self-defense law*, TIMES STANDARD (July 21, 2013, 2:38 AM), http://www.times-standard.com/news/ci_23702620/gallegos-weighs-stand-your-ground-laws-amid-national; Cydney Hargis, *U.S. Backlash Growing Against "Stand Your Ground" Laws*, INTER PRESS SERVICE (July 18, 2013), <http://www.ipsnews.net/2013/07/u-s-backlash-growing-against-stand-your-ground-laws/>; *Are 'Stand Your Ground' Laws a Good Idea?*, U.S. NEWS, <http://www.usnews.com/debate-club/are-stand-your-ground-laws-a-good-idea> (last visited Aug. 25, 2013).

9. For example, the cases involving Trayvon Martin (discussed *infra* Section III(A)(1)), Marissa Alexander (discussed *infra* Section III(A)(2)), and Jamonta Miles (discussed *infra* Section III(B)(1)).

10. In a keynote address during an NAACP convention, Attorney General Eric Holder denounced Stand Your Ground Laws, saying: "We must stand our ground to ensure that our laws reduce violence and take a hard look at laws that contribute to more violence than they prevent." Hargis, *supra* note 8. Conversely, the Humboldt County District Attorney, Paul Gallegos, spoke in defense of California's Stand Your Ground Law, saying: "The reality is if someone comes at you, you should be able to stay there and defend yourself." Greenson, *supra* note 8.

11. See Early Start with John Berman & Zoraida Sambolin, *Intricacies of 'Stand Your Ground' law in Florida*, CNN (Mar. 27, 2012, 7:45 AM), <http://earlystart.blogs.cnn.com/2012/03/27/intricacies-of-stand-your-ground-law-in-florida/>.

12. Cora Currier, *The 24 States that Have Sweeping Self-Defense Laws Just Like Florida's*, PROPUBLICA (Mar. 22, 2012, 12:05 AM), <http://www.propublica.org/article/the-23-states-that-have-sweeping-self-defense-laws-just-like-floridas>.

use of deadly force in self-defense.¹³ Stand Your Ground laws expand traditional self-defense laws both substantively and procedurally.¹⁴

Stand Your Ground laws vary by state regarding the amount of protection they provide to defendants who exercise deadly force in self-defense; however, there are a few provisions common to all Stand Your Ground laws.¹⁵ First, Stand Your Ground laws provide defendants with substantive protections by expanding the traditional Castle Doctrine¹⁶ to allow individuals to use deadly force, *without first retreating*, when they reasonably believe such force is necessary to prevent imminent death or bodily injury.¹⁷ In essence, the laws eradicate the common law duty to retreat and instead permit individuals to literally “stand their ground” when they believe they are being attacked.¹⁸ Additionally, the laws provide significant procedural protections to homicide defendants alleging self-defense.¹⁹ First, the laws presume that persons using deadly force against others in their own dwelling, place of business, or motor vehicle have a reasonable belief²⁰ that

13. Currier, *supra* note 12.

14. *Id.*; Elizabeth B. Megale, *Deadly Combinations: How Self-Defense Laws Pairing Immunity with a Presumption of Fear Allow Criminals to “Get Away with Murder,”* 34 AM. J. TRIAL ADVOC. 105, 108 (2010), available at <http://cf13.tpa.bhn.net/content/dam/news/static/cfnews13/documents/Elizabeth-megale-article-stand-your-ground-0401.pdf> (noting that under the current Florida Stand Your Ground statute, “the combination of a presumption of reasonable fear and immunity converts the presumption of reasonable fear from a rebuttable affirmative defense into an irrebuttable conclusion and absolute bar to prosecution”).

15. See Currier, *supra* note 12 (providing access to certain states’ Stand Your Ground laws).

16. The Castle Doctrine was developed at English Common Law, deeming a man’s home his “castle,” and finding the use of deadly force justifiable when an individual is attacked in his home, without imposing a duty to retreat prior to the use of such force. Christine Catalfamo, *Stand Your Ground: Florida’s Castle Doctrine for the Twenty-First Century*, 4 RUTGERS J.L. & PUB. POL’Y 504, 505 (2007).

17. *Id.* at 524.

18. *Id.* at 510.

19. Megale, *supra* note 14, at 108.

20. What constitutes a “reasonable belief” under self-defense statutes varies state to state. However, both Louisiana and Florida courts require that the defendant have a subjective belief that deadly force is necessary for protection and that the belief is objectively reasonable. See, e.g., *State v. Guinn*, 319 So. 2d 407, 408 (La. 1975). Under Florida law, in determining whether an individual acted appropriately in self-defense, “[t]he jury must determine whether the defendant subjectively held a reasonable belief and whether, under the circumstances, this belief was objectively reasonable.” Lydia Zbrzezni, Comment, *Florida’s Controversial Gun Policy: Liberally Permitting Citizens to Arm Themselves and Broadly Recognizing the Right to Act in*

this force was necessary to prevent unlawful entry or to compel the unlawful intruder to leave.²¹ This places an additional burden of proof on the prosecution to disprove a presumption that the individual was acting reasonably.²² Second, if an individual reasonably uses deadly force in self-defense when he is located in an area where he is lawfully permitted to be and not engaged in an unlawful activity, he will receive legal protection.²³ This legal protection comes in the form of either a decision by police not to arrest the individual or a decision by prosecutors not to press criminal charges, thus granting the individual immunity from prosecution.²⁴

Critics have called the validity of these laws into question with accusations that the laws and their application are riddled with bias against both racial and gender minorities.²⁵ It is also suggested that the laws have not been successful, but instead have caused only more violence in the states where they are enacted.²⁶ Conversely, proponents of the laws argue that while these laws help to deter crime, they also provide victims of attacks with the means to protect their own lives without fear of

Self-Defense, 13 FLA. COASTAL L. REV. 231, 246 (2012) (citing *Quaggin v. State*, 752 So. 2d 19, 23 (Fla. Dist. Ct. App. 2000)). Likewise, Louisiana courts specifically require that “for the force or violence to be justified, the use of such must have been reasonable (an objective standard) and apparently necessary (a subjective standard).” *State v. Guinn*, 319 So. 2d 407, 408 (La. 1975).

21. LA. REV. STAT. ANN. § 14:20(B) (2012).

22. *See id.*

23. Currier, *supra* note 12 (providing information regarding the extent of procedural protections afforded under Stand Your Ground laws varies from state to state); Megale, *supra* note 14, at 107-08.

24. Megale, *supra* note 14, at 108.

25. *See* Tara Murtha, *How race and gender play into PA's Stand Your Ground law*, PHILLYNOW (July 18, 2013), <http://blogs.philadelphiaweekly.com/phillynow/2013/07/18/race-and-gender-play-into-pa%E2%80%99s-stand-your-ground-law/> (“While Pennsylvania [Stand Your Ground] law makes it harder for a woman to use a gun to justifiably defend herself against a man, the law arguably makes it easier for a batterer to kill.”); Zachary Roth, *Is Stand Your Ground racially biased? George Zimmerman v. Marissa Alexander*, MSNB (July 23, 2013, 5:18 PM), <http://tv.msnbc.com/2013/07/23/george-zimmerman-vs-marissa-alexander-is-stand-your-ground-racially-biased/> (citing Michael Yaki, the leader of the U.S. Commission on Civil Rights’ probe of Stand Your Ground laws, who stated that “[a]ll the data shows it makes people kill people more often, and it makes black people die more often.”).

26. Sarah Childress, *Is There Racial Bias in “Stand Your Ground” Laws?*, FRONTLINE (July 31, 2012, 12:40 PM), <http://www.pbs.org/wgbh/pages/frontline/criminal-justice/is-there-racial-bias-in-stand-your-ground-laws/>.

later prosecution.²⁷ Nowhere is the impact of these laws more crucial than in Louisiana, a state that has regularly earned the highest murder rate in the nation and has been awarded the title of “America’s Least Peaceful State.”²⁸ The 2006 enactment of Louisiana’s Stand Your Ground law presents concern that the state’s already exorbitant homicide rates will only be exacerbated as a result of the protection afforded to individuals that kill others.²⁹

Section II of this Comment first traces the evolution of self-defense laws from the English common law to the present, including the Stand Your Ground laws that have been enacted by Louisiana and twenty-three other states.³⁰ Next, Section III argues that Louisiana’s Stand Your Ground law should not be repealed and rebuts many of the challenges that have been raised against Stand Your Ground laws. Specifically, many of these challenges lack empirical support and are often contradicted by those statistics that are available. However, this Comment does urge that the law must undergo a number of significant changes to make it more effective and to reduce discrepancies in its application. This Comment proposes several amendments that should be made to Louisiana’s justifiable homicide statute so that the law can work more effectively. Specifically, this Comment

27. Kyle Scott, *Assessing the stand-your-ground laws*, HOUSTON CHRONICLE (July 2, 2012), <http://www.chron.com/opinion/outlook/article/Assessing-the-stand-your-ground-laws-3679831.php>; *Bill of Rights in the News: Stand Your Ground and Castle Doctrine Laws: Answer Key*, BILL OF RIGHTS INST., <http://billofrightsinstitute.org/wp-content/uploads/2012/04/BRN-Stand-Your-Ground-Answer-Key-4-24-12.pdf> (last visited Aug. 25, 2013) [hereinafter *Bill of Rights in the News*] (“Proponents argue that citizens should be able to protect themselves, their families, and their property by force if they feel threatened, and many hope it will deter criminal activity.”); *Policy Purpose of Stand Your Ground Laws: An Interview with Mercer Political Scientist Lori Johnson*, 13 WMAZ, <http://www.13wmaz.com/video/1531653446001/1/Policy-Purpose-of-Stand-your-Ground-Laws> (last visited Aug. 25, 2013) [hereinafter *Policy Purpose of Stand Your Ground Laws*].

28. *The most, and least, safe states in America*, NBC NEWS (May 6, 2012, 12:03 PM), <http://www.nbcnews.com/business/most-least-safe-states-america-756544>; see *Nationwide Murder Rates: By 2011 Rank, Highest to Lowest*, DEATH PENALTY INFO. CTR, <http://www.deathpenaltyinfo.org/murder-rates-nationally-and-state> (last visited Aug. 25, 2013) [hereinafter *Nationwide Murder Rates*].

29. Although Louisiana’s murder rate increased slightly for a year after the enactment of its Stand Your Ground law, since then, the murder rate has steadily declined, actually reaching a level lower than the state’s murder rate prior to the law’s enactment. *Louisiana Crime Rates 1960-2011*, THE DISASTER CENTER, <http://www.disastercenter.com/crime/lacrime.htm> (last visited Aug. 25, 2013).

30. Currier, *supra* note 12.

first suggests that the law should not apply to first aggressors—individuals that initiate a physical confrontation—unless they have attempted to retreat prior to using deadly force. Second, this Comment submits that the law should not provide protection to individuals who use deadly force against a victim that is retreating from the confrontation. Third, this Comment proposes that Louisiana adopt a reliable record system to record all cases or incidents where Stand Your Ground protection has been invoked, whether successfully or not. Finally, this Comment urges that the law should allow triers of fact, be it the judge or jury, to consider whether the defendant had an opportunity to retreat as part of the analysis of whether Stand Your Ground protection should apply.

II. THE EVOLUTION OF SELF-DEFENSE LAW

Stand Your Ground laws have roots based in the English common law; however, self-defense laws have evolved significantly over the past eight centuries.³¹ Section II of this Comment will explore the evolution of self-defense law from its common law origins in thirteenth-century England to “traditional” American self-defense laws, which require a duty to retreat, to the relatively recent Stand Your Ground laws, which have eradicated the duty to retreat and which have been adopted by 24 states since 2005.³²

A. SELF-DEFENSE AT ENGLISH COMMON LAW

Stringent restrictions on the use of deadly force in self-defense have been recognized since medieval England.³³ The English courts acknowledged that homicides committed in self-defense “represented the sole body of intentional homicides that were nonfelonious and hence not punishable by death.”³⁴ Self-defense homicides were originally recognized by the courts as “excusable,” but only after conviction and pardon.³⁵ Thus, unlike

31. Catalfamo, *supra* note 16, at 505-11.

32. *See* Currier, *supra* note 12.

33. Catalfamo, *supra* note 16, at 505.

34. Thomas A. Green, *The Jury and the English Law of Homicide, 1200-1600*, 74 MICH. L. REV. 413, 420 (1976), available at <http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1136&context=articles>.

35. *Id.* at 419-20. Slayers whose actions were deemed “justified,” were acquitted by the courts, whereas, in order for a crime to be declared “excusable,” the accused were required to obtain royal pardons to be absolved of liability. *Id.* at 419. However, excusable crimes still allowed kin of victims to “prosecute an appeal.” *Id.*

all other intentional homicides at that time, individuals convicted of killing in self-defense could escape capital punishment.³⁶ In order for such a homicide to be deemed non-felonious by the English courts and result in a pardon, the “slayer” was required to do all that he could to avoid using deadly force.³⁷ As a result of this requirement, fourteenth century English courts defined homicide committed in self-defense as “slaying out of literally vital necessity.”³⁸ This definition marked the origins of the modern-day principle of the “duty to retreat” in traditional American self-defense laws, which requires individuals to attempt to withdraw from a conflict prior to resorting to deadly force.³⁹

A few centuries later, as recognized by William Blackstone in his *Commentaries on the Laws of England*, the English courts continued to recognize the majority of homicides committed in self-defense as excusable, but began to carve out exceptions to this general rule.⁴⁰ Blackstone first recognized that in most circumstances *homicide se defendendo*—homicide in self-defense—was still considered excusable, but only when the slayer was engaged in a brawl or some type of physical altercation with his victim at the time deadly force was used.⁴¹ Similar to the courts’ approaches in the previous centuries, in order for such a homicide to be excusable under English law, the law also required “that the person who kills another in his own defense, should have *retreated* as far as he conveniently or safely [could have], to avoid the violence of the assault, before he turns upon his assailant.”⁴² However, Blackstone also recognized that the English courts had begun warming to the idea of treating certain homicides committed in self-defense as justifiable rather than excusable, thus not requiring the defendant to receive a royal pardon in

36. Green, *supra* note 34, at 420.

37. *Id.*

38. *Id.*

39. Catalfamo, *supra* note 16, at 505-09; see Catherine L. Carpenter, *Of the Enemy Within, The Castle Doctrine, and Self-Defense*, 86 MARQ. L. REV. 653, 662-63 (2003).

40. See 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 183-84 (1979).

41. *Id.* at 183.

42. *Id.* at 184-85 (emphasis added) (“[T]o excuse homicide by the plea of self-defense, it must appear that the slayer had no other possible means of escaping from his assailant.”).

order to be acquitted.⁴³ Such homicides were considered “justifiable by the law of nature” when they were committed “for the prevention of any forcible and atrocious crime.”⁴⁴ Blackstone noted the difference between these justifiable homicides in which “the slayer is in no kind of fault whatsoever, not in the minutest degree; and is therefore to be totally acquitted and discharged, with commendation rather than blame,” with other homicides committed in self-defense which are deemed only excusable, “the very name whereof imports some fault . . . so trivial however, that the law excuses it from the guilt of felony.”⁴⁵

In addition to the justifiable homicide exception, the English courts also carved out another narrow exception to the general duty to retreat, which they titled the Castle Doctrine.⁴⁶ This doctrine embodied the general principle of the time—“a man’s home is his castle.”⁴⁷ The English courts confirmed this principle by providing that “if thieves come to a man’s house to rob him, or murder [him], and the owner or his servants kill any of the thieves in defence of himself and his house it is not felony, and he shall lose nothing.”⁴⁸ This doctrine carved out an exception to the general rule requiring retreat, and serves as the basis for current American self-defense laws, particularly the Stand Your Ground laws.⁴⁹

B. TRADITIONAL AMERICAN SELF-DEFENSE LAWS & THE DUTY TO RETREAT

When creating their own bodies of law many of the first states chose to model their laws after the English Common Law,

43. BLACKSTONE, *supra* note 40, at 180-82.

44. *Id.* at 180.

45. *Id.* at 181-82.

46. Catalfamo, *supra* note 16, at 505-06.

47. *Id.*; *See also* BLACKSTONE, *supra* note 40, at 223 (“And the law of England has so particular and tender a regard to the immunity of a man’s house, that it stiles it his castle, and will never suffer it to be violated with impunity: agreeing herein with the sentiments of ancient Rome, as expressed in the works of Tully; *quid enim sanctius, quid omni religione munitius, quam domus uniuscujusque civium?*” [What more sacred, what more strongly guarded by every holy feeling, than a man’s own home?]).

48. Andrea A. Amoa, Comment, *Texas Issues a Formidable License to Kill: A Critical Analysis of the Joe Horn Shootings and the Castle Doctrine*, 33 T. Marshall L. Rev. 293, 293-94 (quoting *Semayne’s Case*, 5 Co. Rep. 91a, 91b, 77 Eng. Rep. 194, 195 (K. B. 1603)).

49. *See* Catalfamo, *supra* note 16, at 505.

while including their own alterations.⁵⁰ The laws of self-defense have been largely left up to state legislatures, and there is no uniform federal law or Supreme Court precedent governing the duty to retreat and an individual's ability to use deadly force in self-defense.⁵¹ As such, states have varied in their approaches to developing laws governing self-defense.⁵² The Court in *McDonald v. City of Chicago* noted that "States have always diverged on how exactly to implement this interest, so there is wide variety across the Nation in the types and amounts of force that may be used, the necessity of retreat, the rights of aggressors, the availability of the 'castle doctrine,' and so forth."⁵³

One provision of self-defense laws almost universally recognized by states is the English Castle Doctrine.⁵⁴ John Adams, the second President of the United States, once said "a man's house is his castle; and while he is quiet, he is as well guarded as a prince in his castle."⁵⁵ In order to ensure the protection for homeowners that John Adams envisaged, states adopted the Castle Doctrine in their self-defense laws, which allow individuals in their home to use deadly force against an intruder without first retreating when the intruder inspires a reasonable belief that the individual is in imminent danger of death or bodily injury.⁵⁶ While states vary as to what is allowed under their separate versions of the Castle Doctrine, Stand Your Ground laws as a rule expand the protections afforded by the Castle Doctrine beyond the home.⁵⁷

Nearly every state does and always has permitted the use of

50. Catalfamo, *supra* note 16, at 507-10.

51. *Id.* at 510-11.

52. For example, while almost all states provided an exception to the duty to the retreat with the Castle Doctrine, states varied with their approaches regarding "requirements of necessity, proportionality, the definition of 'castle' and which occupants of that castle receive protection, and the levels of intrusion that may trigger the doctrine's protection." *Id.*

53. *McDonald v. City of Chicago, Ill.*, 130 S. Ct. 3020, 3106 n.32 (2010).

54. States with limited or no castle doctrine include Idaho, Pennsylvania, South Dakota, Iowa, New Hampshire, New Mexico, Virginia, Vermont, and D.C. Brendan Purves, *Castle Doctrine from State to State*, SOUTH SOURCE (July 15, 2011), <http://source.southuniversity.edu/castle-doctrine-from-state-to-state-46514.aspx>.

55. 2 LEGAL PAPERS OF JOHN ADAMS, CASES 31-62, at 142 (L. Kinvin Wroth & Hiller B. Zobel eds., 1965).

56. *See* Catalfamo, *supra* note 16, at 505-06, 510.

57. *See* Purves, *supra* note 54.

non-deadly force to defend against imminent bodily harm.⁵⁸ Yet, prior to the enactment of Stand Your Ground laws by several states in the early 2000s, unless one was in his own home or dwelling when the attack occurred, the use of deadly force in self-defense required a reasonable belief of imminent danger of death or substantial bodily harm and an attempt to retreat, if such opportunity was available, before exercising such force.⁵⁹ This reflects the traditional self-defense law imposing the common law duty to retreat prior to the use of deadly force, with the common law exception of the Castle Doctrine, abrogating the duty to retreat if the individual is in his own home when attacked by an intruder.⁶⁰ Today, twenty-six states continue to enforce traditional self-defense laws and require an attempt to retreat before using deadly force outside of the home.⁶¹ Nevertheless, a growing number of states, including Louisiana, have adopted Stand Your Ground laws which radically change the traditional American approach to the use of deadly force in self-defense.⁶²

C. MODERN STAND YOUR GROUND LAWS

Stand Your Ground laws have been adopted by twenty-four states, including Louisiana, since 2005.⁶³ This section will first address Stand Your Ground legislation passed in states other than Louisiana. This section will then specifically discuss Louisiana's recently enacted Stand Your Ground law, with a focus

58. *Florida's "Stand Your Ground" Law and Self-Defense*, BLAKE AND DORSTEN, P.A., <http://www.blakedorstenlaw.com/lawyer-attorney-1687102.html> (last visited Aug. 26, 2013); Currier, *supra* note 12 (discussing, however, that "[s]ome states never had a duty to retreat to begin with").

59. MODEL PENAL CODE § 3.04(2)(b) (2012). Although there is no uniform definition of the term "retreat" in regards to self-defense law, courts have interpreted this to impose an "obligation to withdraw from a situation if and to the extent a reasonable person under the same set of circumstances would withdraw." *Bartmess v. State*, 708 S.W.2d 905, 910 (Tex. Ct. App. 1986).

60. *See* Currier, *supra* note 12.

61. *See id.*

62. *Id.*; Lauren McGaughy, *Understanding Louisiana's Stand-Your-Ground and Castle Laws*, TIMES PICAYUNE (July 18, 2013, 6:11 PM), http://www.nola.com/politics/index.ssf/2013/07/louisiana_stand_your_ground_zi.html.

63. Currier, *supra* note 12. The states that have adopted Stand Your Ground self-defense laws at the time of this comment are: Alabama, Arizona, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, and West Virginia. *Id.*

also on Florida law due to the similarities between the two laws.⁶⁴

1. STAND YOUR GROUND LEGISLATION IN STATES OTHER THAN LOUISIANA

Stand Your Ground statutes differ from traditional self-defense laws in that they expand the Castle Doctrine to areas outside of the home.⁶⁵ In other words, these statutes do not impose a duty to retreat on individuals who are attacked either in their homes or in public areas in which the individuals have a lawful right to be as long as they possess a reasonable belief of imminent death or bodily harm.⁶⁶ Therefore, under Stand Your Ground laws, an individual may employ deadly force against another individual without first attempting to avoid this force, or even the confrontation, if he has a reasonable belief that he is in danger of death or substantial bodily harm from the attacker;⁶⁷ this marks a dramatic change from traditional self-defense laws.⁶⁸

In addition, Stand Your Ground laws provide a presumption that an individual attacked within his home had a “reasonable belief” that the use of deadly force was necessary.⁶⁹ For example,

64. Similarities between the Florida and Louisiana statutes allow for comparisons to be drawn between the two laws. Additionally, the older age of the Florida law provides guidance for the implementation and interpretation of Louisiana’s relatively recent Stand Your Ground law. See discussion *infra* Section III.

65. Currier, *supra* note 12.

66. *Id.*

67. See, e.g., ALA. CODE § 13A-3-23 (2013) (“A person may use deadly physical force, and is legally presumed to be justified in using deadly physical force in self-defense or the defense of another person . . . if the person reasonably believes that another person is: (1) Using or about to use unlawful deadly physical force. (2) Using or about to use physical force against an occupant of a dwelling while committing or attempting to commit a burglary of such dwelling. (3) Committing or about to commit a kidnapping in any degree, assault in the first or second degree, burglary in any degree, robbery in any degree, forcible rape or forcible sodomy.”); WASH. REV. CODE ANN. § 9A.16.050 (2011) (“Homicide is also justifiable when committed . . . : (1) In the lawful defense of the slayer . . . when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished.”).

68. See, e.g., ALA. CODE § 13A-3-23(b); TENN. CODE ANN. § 39-11-611(b)(1) (2012).

69. See LA. REV. STAT. ANN. § 14:20 (2012); MISS. CODE ANN. § 97-3-15(3) (West 2006); TENN. CODE ANN. § 39-11-611(c) (West 2012). The traditional Castle Doctrine, while eradicating the duty to retreat inside one’s home, still required the defendant to prove that he had a reasonable belief that deadly force was necessary to protect

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Florida's Stand Your Ground statute provides:

A person is *presumed* to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if:

(a) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and

(b) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.⁷⁰

Laws such as Florida's thereby place the burden of proof on the prosecution to rebut the presumption that the defendant acted reasonably if the attack occurred within the defendant's home or vehicle.⁷¹

Stand Your Ground Laws of some states provide much greater protection for criminal defendants claiming self-defense than others.⁷² In addition to presumptions favoring defendants,

himself. Zbrzezny *supra* note 20, at 251-52. However, the Stand Your Ground laws take this doctrine one step further by providing a presumption of reasonability in the defendant's favor. *Id.* at 254-55.

70. FLA. STAT. ANN. § 776.013 (West 2012) (emphasis added).

71. *See, e.g.*, MISS. CODE ANN. § 97-3-15(3) ("A person who uses defensive force shall be presumed to have reasonably feared imminent death or great bodily harm, or the commission of a felony upon him or another or upon his dwelling . . . if the person against whom the defensive force was used, was in the process of unlawfully and forcibly entering, or had unlawfully and forcibly entered, a dwelling . . ."); TENN. CODE ANN. § 39-11-611(c) ("Any person using force intended or likely to cause death or serious bodily injury within a residence, business, dwelling or vehicle is presumed to have held a reasonable belief of imminent death or serious bodily injury . . .").

72. *Compare* FLA. STAT. ANN. § 776.013 (West 2012) (creating a presumption that the defendant had a reasonable belief that such deadly force was necessary to adequately defend himself), *and* FLA. STAT. ANN. § 776.032 (granting defendants immunity from prosecution and providing defendants arrested by police who did not have probable cause that the defendants did not act in self-defense with the ability to bring a civil suit against the arresting law enforcement), *with* MICH. COMP. LAWS ANN. § 780.972 (West 2013) (denying a presumption in favor of the defendant, and not including any clause prohibiting law enforcement from making an arrest when

states such as Florida provide further procedural protections for defendants to receive prosecutorial immunity.⁷³ Florida's statute provides defendants with an opportunity to request an "immunity hearing" prior to trial, during which the district court judge must consider whether the facts of the case prove by a preponderance of the evidence that the defendant is justified in his actions under the Stand Your Ground law.⁷⁴ If the court finds this burden has been met, the defendant will be granted immunity, and the trial will be dismissed with all relevant charges dropped.⁷⁵ Unlike traditional self-defense laws, which allow the use of self-defense as an affirmative defense for manslaughter or murder, Florida's law permits criminal defendants that claim self-defense to avoid trial and prosecution entirely.⁷⁶

Furthermore, Florida's statute provides protection for defendants at other levels of the criminal process.⁷⁷ At the time of arrest, police are permitted to evaluate whether an individual committed a homicide justifiably in self-defense to determine whether an arrest is necessary.⁷⁸ After the investigation, unless the police find probable cause⁷⁹ that the use of deadly force was unlawful, an arrest is not permitted, and generally no prosecution

there is not probable cause that the defendant did not act in self-defense).

73. Florida's "Stand Your Ground" Law and Self-Defense, *supra* note 58 (stating that a defendant would no longer need to assert an affirmative defense at trial, because under Florida's Stand Your Ground law, the defendant has immunity from prosecution); see FLA. STAT. ANN. § 776.032.

74. See *id.*; Peterson v. State, 983 So. 2d 27, 29 (Fla. 1st Dist. Ct. App. 2008) (holding that "a defendant may raise the question of statutory immunity pretrial and, when such a claim is raised, the trial court must determine whether the defendant has shown by a preponderance of evidence that immunity attaches"); see also Florida's "Stand Your Ground Law": The Use of Deadly Force, Self-Defense, and Prosecutorial Immunity, HUSSEIN & WEBBER, http://www.husseinandwebber.com/stand_your_ground.html (last visited Aug. 27, 2013) (discussing the Peterson case and the "potential immunity from prosecution" under Florida's Stand Your Ground law).

75. HUSSEIN & WEBBER, *supra* note 74.

76. *Id.*

77. See FLA. STAT. ANN. § 776.032(1) (providing that "criminal prosecution," as referred to in regard to immunity, "includes arresting, detaining in custody, and charging or prosecuting the defendant").

78. Henry Pierson Courts, *Cops routinely make arrests in 'stand your ground' cases*, STANDARD-EXAMINER (Mar. 22, 2012, 6:23 AM), <http://www.standard.net/stories/2012/03/21/cops-routinely-make-arrests-stand-your-ground-cases>.

79. Probable cause is defined as "[a] reasonable ground to suspect that a person has committed or is committing a crime . . ." BLACK'S LAW DICTIONARY 1321 (9th ed. 2009).

will follow.⁸⁰ In fact, if a defendant believes he was arrested after acting in self-defense and the police did not have probable cause that his force was unlawful, Florida law permits the defendant to bring a civil suit for wrongful arrest against the police.⁸¹ These procedural protections are not limited to Florida; prosecutors in all Stand Your Ground states retain discretion to bring charges against defendants claiming self-defense.⁸² In Stand Your Ground states, the prosecuting attorney may decline to file charges against a defendant if the attorney believes the Stand Your Ground defense is appropriate.⁸³ Although the level of protection afforded to defendants who claim self-defense varies state to state, as a whole, Stand Your Ground laws are a considerable departure from their common law roots.⁸⁴

2. LOUISIANA'S STAND YOUR GROUND LAW

In 2006, one year after the enactment of Florida's Stand Your Ground law, the Louisiana legislature unanimously voted to amend its statute governing justifiable homicide.⁸⁵ The amendment incorporated the Stand Your Ground element of the Florida law, abrogating the duty to retreat before using deadly force in self-defense; however Louisiana's law differs both procedurally and substantively from Florida's law.⁸⁶

The Louisiana statute declares a homicide justifiable if it is committed:

in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily

80. Zachary L. Weaver, Note, *Florida's "Stand Your Ground" Law: The Actual Effects and the Need for Clarification*, 63 U. MIAMI L. REV. 395, 418 (2008).

81. See *Louisiana 'Stand Your Ground' Law Allows for the use of Deadly Force*, KTBS, <http://www.ktbs.com/story/22382917/louisiana-stand-your-ground-law-allows-for-use-of-deadly-force> (last visited Aug. 27, 2013) [hereinafter *Louisiana 'Stand Your Ground' Law*].

82. Charles E. MacLean & Stephen Wilks, *Keeping Arrows in the Quiver: Mapping the Contours of Prosecutorial Discretion*, 52 WASHBURN L.J. 59, 59-61 (2012) (discussing that in all cases prosecutors retain some level of discretion in determining whether to bring charges, including Stand Your Ground cases).

83. See *id.*

84. See Catafaldo, *supra* note 16, at 525-29.

85. See H.B. 89, 2006 Leg., Reg. Sess. (La. 2006); see also *HB89 by Representative Eric LaFleur*, LA. STATE LEGISLATURE, <http://www.legis.la.gov/legis/BillInfo.aspx?s=06RS&b=HB89&sbi=y> (last visited Aug. 28, 2013).

86. See DeBerry, *supra* note 6; *Louisiana 'Stand Your Ground' Law*, *supra* note 81.

harm [or] . . . [w]hen committed for the purpose of preventing a violent or forcible felony involving danger to life or of great bodily harm by one who reasonably believes that such an offense is about to be committed and that such action is necessary for its prevention.⁸⁷

Louisiana courts have recognized that an affirmative defense for homicide on the basis of self-defense is comprised of two main elements.⁸⁸ A court must determine based on the facts presented that (1) the defendant could have had a reasonable belief that his life was in imminent danger and (2) that deadly force was necessary to prevent this danger.⁸⁹ This law shifts the burden of proof, which traditionally fell to the defendant, to the prosecution to rebut a presumption of reasonableness and necessity.⁹⁰ If the court determines that the prosecution has failed to rebut either of these two elements, the defendant escapes all criminal liability, regardless of whether he attempted to retreat from the danger.⁹¹

While the law places a heavy burden on the prosecution, this burden is not impossible to overcome. In the case of *State v. Barnes*, the Louisiana Fourth Circuit Court of Appeals held that the prosecution had met its burden of proving the defendant did not shoot his two victims in self-defense by showing that one victim was shot in the back while lying on the ground, and the other was shot while running away from the defendant.⁹² The court held that the prosecution sufficiently proved that the deadly force used by the defendant was not necessary to prevent the danger posed to him.⁹³ The Louisiana Third Circuit Court of Appeals also found that a stabbing was not justified under Louisiana's justifiable homicide statute in the case of *State v. Griffin*.⁹⁴ The court concluded that the use of deadly force was not necessary because the defendant was larger than his victim,

87. LA. REV. STAT. ANN. § 14:20(A)(1)-(2) (2012).

88. *State v. Sinceno*, 12-118, p. 9-10 (La. App. 5 Cir. 7/31/12); 99 So. 3d 712, 719-20.

89. *Id.*

90. LA. REV. STAT. ANN. § 14:20(B); *Sinceno*, 99 So. 3d at 719 (stating "the burden is on the State to prove beyond a reasonable doubt that the defendant did not act in self-defense").

91. *See State v. Patterson*, 295 So. 2d 792, 794-95 (La. 1974).

92. *State v. Barnes*, 2011-1421, p. 11-13 (La. App. 4 Cir. 9/19/12); 100 So. 3d 926, 934-35.

93. *Id.* at 935.

94. *State v. Griffin*, 2006-543, p. 14 (La. App. 3 Cir. 9/27/06); 940 So. 2d 845, 854.

the victim had no weapon and only hit the defendant with his fists which left no bruises on the defendant, and any other time that the defendant had an altercation with the victim, the victim had walked away.⁹⁵ Based on these facts, the court found that the prosecution satisfied its burden of proof by showing that the defendant had no reasonable belief that his life was in imminent danger and that deadly force was not necessary to prevent this danger.⁹⁶

In addition to the high burden placed on the prosecution, the Louisiana statute also provides several other substantive and procedural protections from criminal punishment for defendants who commit homicide under the claim of self-defense.⁹⁷ First, the law contains a variation on the traditional Castle Doctrine.⁹⁸ It provides that “there shall be a presumption that a person lawfully inside a dwelling, place of business, or motor vehicle held a reasonable belief that the use of deadly force was necessary to prevent unlawful entry thereto,” if the person against whom deadly force was used was unlawfully or forcibly entering the dwelling.⁹⁹ This presumption favors the defendant, and relieves him of the burden of proving that deadly force was necessary to protect his life.¹⁰⁰

The provision of the Louisiana statute that qualifies it as a Stand Your Ground law provides that “[a] person who is not engaged in unlawful activity and who is in a place where he or she has a right to be shall have no duty to retreat before using deadly force . . . and may stand his or her ground and meet force with force.”¹⁰¹ Like the Florida statute, this provision removes the duty to retreat when individuals are in any area they lawfully have the right to be—whether it be a store, bar, or even the middle of the street.¹⁰² Further, the law prohibits any finder of fact from considering “the possibility of retreat as a factor in determining whether or not the person who used deadly force had a reasonable belief that deadly force was reasonable and

95. *State v. Griffin*, 2006-543, p. 14 (La. App. 3 Cir. 9/27/06); 940 So. 2d 845, 853-54.

96. *Id.* at 854.

97. *See* LA. REV. STAT. ANN. § 14:20 (2012).

98. *Id.* § 14:20(B).

99. *Id.*

100. *See id.*

101. *Id.* § 14:20(C).

102. LA. REV. STAT. ANN. § 14:20(C) (2012).

apparently necessary.”¹⁰³ Thus, while deciding the validity of a self-defense claim, judges and juries are not even granted the opportunity to consider whether the defendant could have safely and easily retreated from a deadly altercation.¹⁰⁴ As stated in an opinion issued by the Louisiana Second Circuit Court of Appeals, by including this provision, “the legislature has curtailed the evidence that may be offered by the State in proving the use of force unreasonable, and specifically has forbidden the consideration of the possibility of retreat vis-a-vis the use of force.”¹⁰⁵ This provision permits defendants to resort to deadly force even when they have an opportunity to safely escape and increases the risk that the law’s protections will be abused by those not deserving of it.

Despite the number of protections afforded to defendants by Louisiana’s Stand Your Ground law, Louisiana’s self-defense law is not as extreme as those of other states. The Louisiana law contains no provision that prohibits police from making an arrest if they do not find probable cause to believe the homicide was committed in self-defense.¹⁰⁶ Moreover, Louisiana does not allow a judge to hold an immunity hearing prior to a trial in which a claim may be dismissed if the judge determines that the Stand Your Ground defense is valid.¹⁰⁷ While not as controversial as

103. LA. REV. STAT. ANN. § 14:20(D) (2012).

104. *Id.*

105. *State v. Ingram*, 45, 546, p. 10 (La. App. 2 Cir. 6/22/11); 71 So. 3d 437, 445, *writ denied*, 77 So. 3d 947 (La. 2012).

106. See Kristy Davis, *Stand Your Ground laws similar to Louisiana law*, WBRZ.COM (Apr. 2, 2012, 10:40 PM), <http://www.wbrz.com/news/stand-your-ground-laws-similar-to-louisiana-law>. In fact, under a recent enacted law passed in 2012 based on a bill introduced by Louisiana Senator Morrell, Louisiana police are legally obligated to investigate cases in which the accused alleges self-defense under the Stand Your Ground law. See McGaughy, *supra* note 62. However, Louisiana law enforcement officials at varying levels, including the prosecuting attorney and trial judge, have discretion to consider whether homicide charges are appropriate for a defendant claiming defense under the Stand Your Ground law. See John DeSantis, *Stand your ground: Louisiana ‘self-defense friendly,’* TRI-PARISH TIMES (July 23, 2013, 2:09 PM), http://www.tri-parishtimes.com/news/article_6d8d97c4-f3cb-11e2-8720-001a4bcf887a.html. This allows for a “screening out” process at varying levels of the judicial process, providing yet another protection for defendants. *Id.*

107. See LaFleur, *H.B. 89: Digest* (2006) [hereinafter H.B. 89 Digest], available at <http://www.legis.la.gov/Legis/ViewDocument.aspx?d=383050&n=Digest%20of%20HB%2089%20Engrossed>. Louisiana’s law may be contrasted with Florida’s law. In Florida, if the district court judge determines by a preponderance of the evidence that the defendant is justified in his actions under the Stand Your Ground law during an immunity hearing, immunity will be granted and the trial will be dismissed.

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several of the more extreme Stand Your Ground laws,¹⁰⁸ Louisiana's self-defense statute has raised many concerns, especially due to the fact that the state has the highest murder rate in the nation.¹⁰⁹

III. PROPOSALS REGARDING LOUISIANA'S STAND YOUR GROUND LAW

In recent years, Stand Your Ground laws have come under national attack for various reasons.¹¹⁰ However, many of the challenges brought against Stand Your Ground laws lack a sound basis. Ultimately, the idea behind Louisiana's Stand Your Ground law is solid: the law provides individuals who reside in one of the most dangerous states in America with the legal protection necessary when they defend themselves against intruders and assailants. Despite the legitimate purpose underlying Louisiana's Stand Your Ground law, the disparate and ineffective application of the law clearly shows the need for change. Subsection A contends that Louisiana's Stand Your Ground law should remain enacted and rebuts the challenges that have been raised against the law by individuals arguing for its repeal. Subsection B then evaluates the necessary amendments that must be made to the law in order for it to work effectively and as intended.

A. LOUISIANA'S STAND YOUR GROUND LAW SHOULD NOT BE REPEALED

The policy behind Stand Your Ground laws is to give victims of violent crimes the legal protection to defend themselves.¹¹¹

HUSSEIN & WEBBER, *supra* note 74. The Louisiana House of Representatives rejected a provision of the original bill to amend the state's justified homicide statute that "provid[ed] for immunity from criminal prosecution for use of force or justifiable homicide." H.B. 89 Digest.

108. For example, unlike Florida's Stand Your Ground law, the Louisiana law does not contain any provision preventing police from making an arrest if there is probable cause that the homicide was committed in self-defense. Kristy Davis, *supra* note 106.

109. *Nationwide Murder Rates*, *supra* note 28.

110. See Hargis, *supra* note 8 (discussing that Stand Your Ground laws have come under national scrutiny, largely based on the highly publicized trial of George Zimmerman); Steve Klingaman, *Ten Reasons to Repeal Stand Your Ground Laws*, OPEN SALON (Apr. 11, 2012, 5:24 PM), http://open.salon.com/blog/steve_klingaman/2012/04/11/ten_reasons_to_repeal_stand_your_ground_laws (providing one writer's views on why the Stand Your Ground laws should be repealed).

111. *Bill of Rights in the News*, *supra* note 27; *Policy Purpose of Stand Your*

Stand Your Ground laws “allow a person to justifiably defend themselves without fear of being arrested.”¹¹² To criminally prosecute individuals who have no other option than to resort to deadly force to save themselves from death or serious bodily injury is fundamentally unfair. The stigma attached to these prosecutions has the ability to ruin the individual’s reputation and detrimentally impact the individual’s life. The government should not allow a victim to survive a deadly attack only to subsequently destroy his life through legal means.

Stand Your Ground protections are nowhere more necessary than in the state of Louisiana. Louisiana is widely known for the extravagance of New Orleans and the raucousness of Carnival season, but underneath the glitz and glam the state has a much darker side. Since 1996, Louisiana has had the highest murder rate of any state in the nation.¹¹³ In 2011, the Louisiana murder rate was calculated at a staggering 11.2 murders per 100,000 residents.¹¹⁴ This can be contrasted with the national murder rate, which in 2011 was calculated to be only 4.7 murders per 100,000 residents.¹¹⁵ In 2011, a stunning 513 murders were reported in the state of Louisiana.¹¹⁶ That year, Louisiana also reported a total of 4,574,836 instances of violent crime.¹¹⁷ In the city of New Orleans alone, 200 homicides (murders and non-negligent manslaughters) were reported in 2011.¹¹⁸ This number is ten times that of the national average and five times higher than the average in cities of comparable size.¹¹⁹

Ground Laws, *supra* note 27.

112. Kirk R. Menard, *Self Defense and Stand Your Ground laws*, HG.ORG: LEGAL RESOURCES (Dec. 9, 2012), <http://www.hg.org/article.asp?id=29319>.

113. *Nationwide Murder Rates*, *supra* note 28.

114. *Id.*

115. *Id.*

116. FED. BUREAU OF INVESTIGATION, CRIMINAL JUSTICE INFO. SERVS. DIVISION, UNIFORM CRIME REPORTS: TABLE 5: CRIME IN THE UNITED STATES BY STATE, 2011, *available at* <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/table-5> (last visited Aug. 28, 2013).

117. *Id.*

118. FED. BUREAU OF INVESTIGATION, CRIMINAL JUSTICE INFO. SERVS. DIVISION, TABLE 8: OFFENSES KNOWN TO LAW ENFORCEMENT, BY STATE BY CITY, 2011, *available at* http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/table_8_offenses_known_to_law_enforcement_by_state_by_city_2011.xls (last visited Aug. 30, 2012).

119. Douglas McCollam, *In America’s Murder Capital, the Killing is Personal*, WALL ST. J. (Nov. 12, 2011), <http://online.wsj.com/article/SB10001424052970204224604577028463391009838.html>.

In a state where violent crimes are not unusual, victims of a violent attack should have the legal means to defend themselves without repercussion. Stand Your Ground laws are “not a license to kill, but a fundamental right to defend your person.”¹²⁰ Affording substantive and procedural legal protections to individuals who must resort to deadly force to fend off brutal attacks protects innocent victims of violent crime. Due to the protections that Louisiana’s justifiable homicide statute provides to victims of attacks, despite changes that must be made to the law, the law as a whole should remain enacted. This section rebuts allegations that Louisiana’s law is applied with either a racial or gender bias.

1. LACK OF RACIAL BIAS IN LOUISIANA’S STAND YOUR GROUND LAW

In recent years, perhaps the most prominent argument in favor of the repeal of Stand Your Ground laws is that the laws result in racial bias, favoring white defendants that use deadly force in self-defense over black defendants.¹²¹ This argument is two pronged; opponents first argue that the law is biased in that it favors white individuals that invoke Stand Your Ground Protection over black individuals that do the same.¹²² Opponents further argue that the law is more likely to be applied in cases in which a white individual kills a black individual than in similar cases when black individual kills a white individual.¹²³ The controversy surrounding the laws and its effect on the black community hit its zenith after the homicide of Trayvon Martin and the highly publicized trial of his shooter.¹²⁴

Challengers of the laws point to the unjustified shooting of

120. Menard, *supra* note 112 (internal quotations omitted).

121. Childress, *supra* note 26.

122. See Nick Wing, *Alan Williams, Florida Democrat, Will Push ‘Stand Your Ground’ Repeal After Zimmerman Verdict*, HUFFINGTON POST (July 15, 2013, 12:04 PM), http://www.huffingtonpost.com/2013/07/15/alan-williams-stand-your-ground_n_3598833.html.

123. *Id.* (citing studies indicating that “‘Stand Your Ground’ is more likely to be applied in cases of white-on-black crime”).

124. See Nicholas Demas, *Zimmerman Verdict Backlash Proves There’s No Such Thing As a Post-Racial America*, POLICYMIC (July 2013), <http://www.policymic.com/articles/54669/zimmerman-not-guilty-no-such-thing-as-a-post-racial-american>; see also Jelani Cobb, *George Zimmerman, Not Guilty: Blood on the Leaves*, THE NEW YORKER (July 13, 2013), <http://www.newyorker.com/online/blogs/newsdesk/2013/07/george-zimmerman-not-guilty-blood-on-the-leaves.html>.

Trayvon Martin—a seventeen-year-old, unarmed black youth with no criminal record—as evidence of the flaws inherent in the application of Stand Your Ground laws.¹²⁵ In 2012, Martin was staying with his father in a home in a Florida gated community.¹²⁶ One evening, Martin, clothed in a hooded sweatshirt, walked down the street to the 7-11 where he purchased Skittles and iced tea.¹²⁷ On his return home, Martin aroused the suspicion of twenty-eight-year-old George Zimmerman, a Hispanic male who was sitting outside in an SUV.¹²⁸ Zimmerman, who served as the neighborhood watch captain, although unprovoked, immediately called 911.¹²⁹ The 911 operator explicitly warned Zimmerman “not to pursue the boy.”¹³⁰ Ignoring this instruction, Zimmerman confronted Martin, and although the specifics of what happened next are disputed, the incident culminated in Zimmerman fatally shooting Martin squarely in the chest with a nine-millimeter handgun.¹³¹

According to Zimmerman’s version of events, Zimmerman got out of his car and followed Martin, eventually losing sight of him.¹³² As he was returning to his car, Martin allegedly approached Zimmerman from behind and confronted him.¹³³ Zimmerman claimed that Martin then shoved him to the ground and relentlessly began punching him and slamming his head into the sidewalk.¹³⁴ Zimmerman further claimed that Martin then

125. See Robert Gooding-Williams, *Fugitive Slave Mentality*, N.Y. TIMES (Mar. 27, 2012, 9:45 PM), <http://opinionator.blogs.nytimes.com/2012/03/27/fugitive-slave-mentality/> (arguing that Florida’s Stand Your Ground laws could be “the functional equivalent of a fugitive slave law” and “threaten[] to render some citizens subject to the arbitrary wills of others”).

126. *Trayvon Martin Shooting Fast Facts*, CNN (July 16, 2013, 8:20 PM), <http://www.cnn.com/2013/06/05/us/trayvon-martin-shooting-fast-facts>.

127. Charles M. Blow, *The Curious Case of Trayvon Martin*, N.Y. TIMES (Mar. 17, 2012), available at 2012 WLNR 5722386; Erin Donaghue, *George Zimmerman trial: Neighbor testifies Trayvon Martin was straddling Zimmerman moments before fatal gunshot*, CBS NEWS (June 28, 12:00 PM), http://www.cbsnews.com/8301-504083_162-57591520-504083/george-zimmerman-trial-neighbor-testifies-trayvon-martin-was-straddling-zimmerman-moments-before-fatal-gunshot/.

128. Blow, *supra* note 127.

129. *Id.*

130. *Id.*

131. *Id.*

132. See Haeyoun Park et al., *The Events Leading to the Shooting of Trayvon Martin*, N.Y. TIMES, <http://www.nytimes.com/interactive/2012/04/02/us/the-events-leading-to-the-shooting-of-trayvon-martin.html> (last updated June 21, 2012).

133. *Id.*

134. *Id.*

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told him, “you are going to die tonight,” after which Zimmerman pulled out his gun and shot Martin in the chest.¹³⁵ Since the shooting, conflicting evidence has been presented, including differing eyewitness accounts: some say that Zimmerman appeared unharmed, others say that they saw Zimmerman on top of Martin, and still others claim that Martin was attacking Zimmerman prior to the shooting.¹³⁶

Upon the police's arrival at the scene, Zimmerman immediately claimed that he lawfully shot Martin in self-defense, invoking the Florida Stand Your Ground law.¹³⁷ Although he was initially taken into custody, the police determined that there was no probable cause that the shooting was unlawful and that they had insufficient evidence to hold Zimmerman.¹³⁸ Because the Florida police did not have probable cause that Zimmerman did not kill Martin in self-defense, as required by Florida's law, Zimmerman was released and no charges were initially brought against him.¹³⁹ Although Zimmerman was not immediately arrested, over six weeks later, following a national public outcry, the state of Florida charged Zimmerman with second-degree murder.¹⁴⁰ Zimmerman pled not guilty on grounds of self-

135. Park et al., *supra* note 132.

136. *Id.*; Donaghue, *supra* note 127. Conflicting evidence was also presented at trial. See Manuel Roig-Franzia, *George Zimmerman trial continues to focus on 911 call*, WASH. POST (July 8, 2013), http://www.washingtonpost.com/national/george-zimmerman-trial-continues-to-focus-on-911-tape/2013/07/08/97e65f6c-e7e9-11e2-aa9f-c03a72e2d342_story.html. A recording of the 911 call Zimmerman made while pursuing Trayvon, in which yells of “Help, Help!” can be heard in the background was entered into evidence. *Id.* George Zimmerman's mother testified that the yelling voice belonged to her son, but the mother and brother of Trayvon Martin instead testified that it was the recording depicting Trayvon yelling for help. *Id.* Several other witnesses were also called to testify regarding whose voice they heard on the tape. *Id.*

137. See Julia Dahl, *Trayvon Martin shooting: A timeline of events*, CBS NEWS (Apr. 11, 2012, 2:23 PM), http://www.cbsnews.com/8301-504083_162-57412417-504083/trayvon-martin-shooting-a-timeline-of-events/.

138. See *Trayvon Martin Shooting Fast Facts*, *supra* note 126 (stating the Chief of Police had said Zimmerman was not charged because there were “no grounds to disprove his story of the events”). The police's failure to hold Zimmerman is representative of the restrictions placed on police by Florida's Stand Your Ground law. The law prohibits police from making an arrest if they find probable cause that the crime was committed in self-defense. Kristy Davis, *supra* note 106.

139. *Id.*

140. Bill Chappell, *Zimmerman Arrested on Murder Charge in Martin Case; Will Not Plead Guilty*, NPR (Apr. 11, 2012, 6:06 PM), <http://www.npr.org/blogs/thetwo-way/2012/04/11/150449405/zimmerman-arrested-on-murder-charge-in-martin-case>.

defense.¹⁴¹

After an emotional and highly publicized trial that lasted over two weeks, the jury returned a verdict finding Zimmerman not guilty of second-degree murder and acquitting him for the death of Trayvon Martin.¹⁴² During his trial, Zimmerman did not seek a pre-trial immunity hearing under the Stand Your Ground law and instead chose to present a case of traditional self-defense.¹⁴³ Despite Zimmerman's decision not to raise the issue of Stand Your Ground, language from Florida's Stand Your Ground statute was included in the jury instructions.¹⁴⁴ However, due to the specific circumstances of the case and Zimmerman's reliance on the theory of traditional self-defense rather than Stand Your Ground protection, the portion of the jury instructions that included language from the Stand Your Ground statute should have had no bearing on the jury's verdict.¹⁴⁵

141. Doug Stanglin, *George Zimmerman trial date set for June 10*, USA TODAY (Oct. 17, 2012, 3:02 PM), <http://www.usatoday.com/story/ondeadline/2012/10/17/george-zimmerman-trial-trayvo-martin/1638589/>.

142. Seni Tienabesco et al., *George Zimmerman Found Not Guilty and Goes Free*, ABC NEWS (July 13, 2013), <http://abcnews.go.com/US/george-zimmerman-found-guilty-free/story?id=19653300>.

143. Jonathan Turley, *The Stand Your Ground Law and the Zimmerman Trial*, JONATHAN TURLEY: RES IPSA LOQUITOR ("THE THING ITSELF SPEAKS") (July 20, 2013), <http://jonathanturley.org/2013/07/20/the-stand-your-ground-law-and-the-zimmerman-trial/>. Zimmerman's defense counsel informed the media that the basis for this decision was that that he and Zimmerman "would much rather have the jury address the issue of criminal liability or lack thereof," but critics of Zimmerman contended that this was part of the team's plan to avoid Zimmerman having to testify at trial. CNN Staff, *Zimmerman to argue self-defense, will not seek 'stand your ground' hearing*, CNN (May 1, 2013), <http://www.cnn.com/2013/04/30/justice/florida-zimmerman-defense/index.html>.

144. Sean Davis, *No, George Zimmerman Wasn't Acquitted Because of Florida's "Stand Your Ground" Law*, MEDIA TRACKERS (July 22, 2013), <http://mediatrackers.org/florida/2013/07/22/no-george-zimmerman-wasnt-acquitted-because-of-floridas-stand-your-ground-law> (providing the jury instructions of which one paragraph of twenty-seven pages of jury instructions stated, "If George Zimmerman was not engaged in an unlawful activity and was attacked in any place where he had a right to be, he had no duty to retreat and had the right to stand his ground and meet force with force, including deadly force if he reasonably believed that it was necessary to do so to prevent death or great bodily harm to himself or another or to prevent the commission of a forcible felony.").

145. *Id.* ("Because of the facts of the Zimmerman case and the differing theories of what happened leading up to Trayvon Martin's death, neither the 'Stand Your Ground' law nor the 'Stand Your Ground' jury instructions had any bearing on the case."). Furthermore, the prosecution explicitly informed the jury in the closing argument that "this case is not about Stand Your Ground." *Id.*

However, despite the minimal involvement of Stand Your Ground in the Zimmerman trial, the jury's verdict sparked an even greater backlash against Stand Your Ground laws with allegations that the laws promote racial bias.¹⁴⁶ This controversy was only exacerbated by the public statements made by President Barack Obama at a press briefing shortly following the verdict.¹⁴⁷ President Obama, in an emotionally poignant moment, stated: "Trayvon Martin could have been me 35 years ago."¹⁴⁸ Although he acknowledged that Stand Your Ground had not been raised in the trial, he posed the questions: "[I]f Trayvon Martin was of age and armed, could he have stood his ground on that sidewalk? And do we actually think that he would have been justified in shooting Mr. Zimmerman, who had followed him in a car, because he felt threatened?"¹⁴⁹ Implying that Stand Your Ground laws are associated with a bias against black individuals and minorities, President Obama expressly stated "we might want to examine those kinds of laws."¹⁵⁰ While the full effect of President Obama's remarks cannot yet be known, it is clear that they have added fuel to the racial bias arguments posed by Stand Your Ground opponents.

In addition to the shooting of Trayvon Martin and the acquittal of George Zimmerman, critics of Stand Your Ground laws point to recent research on the demographic breakdown of self-defense decisions.¹⁵¹ A recently conducted analysis of data compiled by the Federal Bureau of Investigation from both Stand Your Ground and non-Stand Your Ground states shows that homicides in which white individuals kill black individuals in self-defense are found to be justified 11.4% of the time, whereas homicides in which black individuals kill white individuals in

146. See Demas, *supra* note 124; see generally Faith Karimi, 'Raise your voice, not your hands,' cops urge as Zimmerman verdict looms, CNN (July 10, 2013, 10:24 AM), <http://www.cnn.com/2013/07/10/justice/florida-zimmerman-backlash> (discussing that prior to the return of the verdict, Florida authorities set up a response plan to guard against violent backlash, due to the race-tinged and highly publicized nature of the trial, including a public service announcement and a warning to the public to "raise your voice, not your hands").

147. Kathleen Parker, *Obama's race remarks exacerbate tensions*, WASH. POST: OPINIONS (Aug. 23, 2013), http://articles.washingtonpost.com/2013-08-23/opinions/41439364_1_trayvon-martin-george-zimmerman-purses.

148. The Editorial Board, *President Obama's Anguish*, N.Y. TIMES (July 20, 2013), available at 2013 WLNR 17695273.

149. *Id.*

150. *Id.*

151. Childress, *supra* note 26.

self-defense are found to be justified only 1.2% of the time.¹⁵² Challengers argue that these numbers clearly reflect a racial bias in the application of Stand Your Ground laws, and as a result, they argue for the repeal of those laws.¹⁵³

However, these studies and similar reports are not compelling evidence of racial bias, despite the claims of Stand Your Ground critics to the contrary. First, white on black killings are extremely rare compared to other types of homicides, such as minority on minority or minority on white killings.¹⁵⁴ The study also does not reveal the circumstances behind the killings or the point in the judicial process where the individual's killing was found justified.¹⁵⁵ Without knowing the details of these killings, it is impossible to reach any clear conclusion. As a result, it is extremely difficult to compare numerical data of justified cases.¹⁵⁶ In fact, John K. Roman, the conductor of the analysis, admits that it is possible that the racial disparity evident in the study is not due to "racial animus" in the application of Stand Your Ground laws, but may instead be due to the particular facts surrounding each case.¹⁵⁷ Therefore, despite the allegations of Stand Your Ground critics, this study is not clear evidence of racial bias in the application of the Stand Your Ground laws.

While the shooting of Trayvon Martin is undeniably heart wrenching and a story of a life cut too short, this does not provide an example of racial bias in favor of white on black killings in the application of Stand Your Ground laws. First, George

152. John K. Roman, *Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data*, URBAN INST. 6 (2013), available at <http://www.urban.org/UploadedPDF/412873-stand-your-ground.pdf>.

153. See Klingaman, *supra* note 110; Wing, *supra* note 122.

154. See Roman, *supra* note 152, at 3 (noting that only 3.9% of the cases studied involved white individuals killing other white individuals).

155. Childress, *supra* note 26; Roman, *supra* note 152, at 1.

156. See Childress, *supra* note 26 (discussing that statistics lacking explanation are not as clear as they may appear, and are thus impossible of effectively being compared with other statistics, in part because, "[t]he system offers substantial discretion to authorities at every level, which is much more difficult to monitor and evaluate.").

157. Roman, *supra* note 152, at 11 ("[I]t is possible that this finding of racial disparity is not associated with any conscious or unconscious racial animus in the justice system. If the facts of white-on-black homicides differ from the facts associated with black-on-white homicides such that one routinely occurs as part of self-defense and the other as part of a street crime, then there is no animus. The data here cannot completely address this problem because the setting of the incident cannot be observed.").

Zimmerman is Hispanic, not white, so his shooting of Martin represents a minority on minority shooting, not a white on black shooting.¹⁵⁸ Second, and more importantly, Zimmerman never relied on the Stand Your Ground protections, and in fact, waived his hearing for immunity under the Florida Stand Your Ground law prior to the trial.¹⁵⁹ Instead, Zimmerman's acquittal is based solely on the principles of traditional self-defense, rather than Stand Your Ground.¹⁶⁰ As a result, despite the racial tensions underlying the case, the "not-guilty" verdict Zimmerman received is not evidence of racial disparity in the application of Stand Your Ground laws.¹⁶¹

Despite certain emotional cases, such as the shooting of Trayvon Martin, when the Stand Your Ground cases are viewed as a whole, the discrepancies in the numbers become more understandable. Although certain statistics may give the appearance of a disparate impact, without the background and circumstances of these cases, it is impossible to argue that these statistics provide clear evidence of racial bias. In fact, recent studies have revealed other statistics indicating that Stand Your Ground laws may not be as racially discriminatory as challengers claim.¹⁶² For example, the *Tampa Bay Times* has compiled a list of the 235 Stand Your Ground cases in Florida since the enactment of its current self-defense law.¹⁶³ Upon compiling and

158. Zimmerman is the child of a Peruvian mother and a Caucasian father. Suzanne Gamboa, *Trayvon Martin Case: George Zimmerman's Race is a Complicated Matter*, HUFFINGTON POST (Mar. 29, 2012, 7:16 AM), http://www.huffingtonpost.com/2012/03/29/trayvon-martin-case-georg_n_1387711.html. On voter registration forms, Zimmerman identified himself as Hispanic. *Id.*

159. Turley, *supra* note 143. The only protection Zimmerman received as a result of the state's Stand Your Ground law was the police's decision not to initially arrest. See Chappell, *supra* note 140.

160. Turley, *supra* note 143 ("Even without the [Stand Your Ground] law, this encounter would have likely unfolded in the same way and the outcome at trial would have likely been the same.").

161. Although one may argue this verdict is the result of racial disparity in the overall judicial process. See generally Sheri Lynn Johnson, *Black Innocence and the White Jury*, 83 MICH. L. REV. 1611 (1985).

162. See Roman, *supra* note 152, at 11 (discussing that racial disparity in conducted analysis may not be as apparent as it appears due to the failure to consider other variables such as the setting of the shooting, weapon used, and age of the victim or shooter); *Florida's Stand Your Ground Law: Explore our 'stand your ground' data*, TAMPA BAY TIMES, <http://www.tampabay.com/stand-your-ground-law/data> (last visited Aug. 29, 2013) [hereinafter *Florida's "stand your ground" data*].

163. *Florida's "stand your ground" data*, *supra* note 162. Due to the prevalence of Florida's Stand Your Ground Law in the media and the recent backlash that the

evaluating these cases, the *Times* found no apparent racial bias.¹⁶⁴ The study determined that “[w]hites who invoked [Stand Your Ground protection] were charged at the same rate as blacks, [and] [w]hites who went to trial were convicted at the same rates as blacks.”¹⁶⁵ Most significantly, of the cases out of this list that were fatal, the *Tampa Bay Times* concluded that black defendants went free 66% of the time while white defendants went free 61% of the time.¹⁶⁶ This in-depth study reveals that allegations of racial bias in Stand Your Ground laws may be less credible than they appear.

Additionally, as stated by Florida Representative Dennis Baxley, even if racial bias may result from application of the Stand Your Ground laws, “that doesn’t make it bad law.”¹⁶⁷ The law in itself protects victims who choose to use deadly force against their attacker when necessary, regardless of their race.¹⁶⁸ In confronting the arguments of racial bias, Representative Baxley responded: “There’s no color, there’s no gender. What about a young African boy [sic] that’s jumped by a bunch of skinheads? . . . That bill protects him.”¹⁶⁹ As implied by Representative Baxley, disparate sentencing resulting from Stand Your Ground laws based on race may be due to factors in the judicial system that are external to Stand Your Ground laws.¹⁷⁰ For generations, racial bias in homicide prosecutions has been problematic; complaints have consistently been made that judges and juries base their decisions on their personal prejudices

state’s law has come under as a result of the George Zimmerman trial, as well as the fact that as of the publication of this Comment, this was the only state-wide study to be conducted regarding racial bias and Stand Your Ground laws, for purposes of this Comment, this study is intended to serve as a representation of Stand Your Ground laws in general.

164. Susan Taylor Martin et al., *Race’s Complex Roles*, TAMPA BAY TIMES (June 4, 2012), available at 2012 WLNR 11708977.

165. *Id.* (discussing the study’s determination that, “In mixed-race cases involving fatalities, the outcomes were similar. Four of the five blacks who killed a white went free; five of the six whites who killed a black went free.”).

166. *Id.* The Tampa Bay Times blames this slight discrepancy on the fact that “blacks were more likely to kill another black.” *Id.*

167. Trymaine Lee, *Stand Your Ground Task Force, With Questions of Bias, Urged To Amend Law*, HUFFINGTON POST (June 13, 2012, 4:30 PM), http://www.huffingtonpost.com/2012/06/13/trayvon-martins-parents-stand-your-ground_n_1594231.html.

168. *See id.*

169. *Id.*

170. *Id.*

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rather than the facts of the cases.¹⁷¹ Stand Your Ground laws should not bear the brunt of criticism for flaws that may be inherent in the nation's judicial system and a repeal of the laws will not successfully cure these flaws.

Specifically, challenges of racial bias in the application of Stand Your Ground laws do not hold weight in Louisiana. Although Louisiana has not released statistics regarding the impact of the law on minorities and gender, this silence may in itself be indicative of a lack of a bias. Despite anecdotal evidence that may appear to support the existence of racial bias, Stand Your Ground laws adopted by Louisiana and other states do not overtly discriminate against minorities.¹⁷² As a result, racial bias should not serve as a valid reason to repeal or substantially alter Louisiana's justifiable homicide statute.

2. LACK OF GENDER BIAS IN LOUISIANA'S STAND YOUR GROUND LAW

In addition to a bias favoring white individuals that use deadly force against black individuals, accusations have been made that Stand Your Ground laws favor males that kill females, allegedly in self-defense.¹⁷³ Similarly to those who argue that Stand Your Ground laws promote racial bias, challengers who argue that the laws result in bias against females point to several cases for support, most prominently, the Florida case of Marissa Alexander.¹⁷⁴ Alexander is a thirty-one-year-old female that engaged in an oral altercation with her estranged black husband, who had a history of domestic abuse.¹⁷⁵ Though the facts are disputed, Alexander claims that at one point in the argument, her husband attempted to strangle her.¹⁷⁶ Alexander says that she

171. *See generally* Johnson, *supra* note 161 (analyzing statistics implying that generally in criminal trials, white juries are likely to convict black defendants in cases where a white defendant would have been acquitted).

172. *See supra* Section III(A).

173. Julie Dahl, *Fla. woman Marisa Alexander gets 20 years for 'warning shot': Did she stand her ground*, CBS NEWS (May 15, 2012, 2:42 PM), http://www.cbsnews.com/8301-504083_162-57434757-504083/fla-woman-marissa-alexander-gets-20-years-for-warning-shot-did-she-stand-her-ground/ (referring to a statement made by Representative Corrine Brown).

174. *See id.*

175. *Id.*

176. CNN Wire Staff, *Florida woman sentenced to 20 years in controversial warning shot case*, CNN JUSTICE, (May 11, 2012, 9:55 PM), <http://www.cnn.com/2012/05/11/justice/florida-stand-ground-sentencing/index.html>.

then ran to the garage to escape, but since she did not have her keys on her, she was unable to leave the house.¹⁷⁷ Instead, Alexander grabbed her gun from the garage for protection before re-entering the house.¹⁷⁸ Upon re-entry to the house Alexander came face-to-face with her husband, whom she claims then threatened to kill her, at which point Alexander supposedly fired a warning shot into the air that ultimately wounded her husband.¹⁷⁹ Despite the fact that the shooting was not fatal and Alexander's claims that she never intended to wound or kill anyone and was instead merely attempting to escape from the conflict, she was arrested and charged with aggravated assault with a deadly weapon.¹⁸⁰ Alexander claimed self-defense under Florida's Stand Your Ground law; yet, unlike Zimmerman, Alexander was immediately arrested and ultimately, prosecuted and convicted.¹⁸¹

The judge in Alexander's trial refused to grant immunity at a pre-trial hearing, finding that there was insufficient evidence to prove Alexander reasonably believed deadly force was necessary to protect herself from imminent death or bodily harm.¹⁸² A jury convicted her of aggravated assault with a deadly weapon, and she received a mandatory minimum sentence of twenty years in prison.¹⁸³ The court's refusal to grant immunity under the Stand Your Ground laws infuriated members of the public.¹⁸⁴ On the day of the sentencing, Congresswomen Corrine Brown of Florida spoke on behalf of those angered by the application of the Stand Your Ground law, stating that "[t]he Florida criminal justice system has sent [a] clear message[] today . . . that if women who are victims of domestic violence try to protect themselves, the 'Stand Your Ground Law' will not apply to them."¹⁸⁵

Upon evaluating the impact of Stand Your Ground laws in Louisiana, however, it becomes evident that allegations of gender bias in the application of the law, like those of racial bias, lack merit. The argument of gender bias in self-defense is not unique

177. CNN Wire Staff, *supra* note 176.

178. *Id.*

179. *Id.*; Dahl, *supra* note 173.

180. CNN Wire Staff, *supra* note 176.

181. *Id.*; Dahl, *supra* note 173.

182. Dahl, *supra* note 173.

183. *Id.*

184. CNN Wire Staff, *supra* note 176.

185. Dahl, *supra* note 173.

to Stand Your Ground laws, and has been a prevalent feminist argument since the 1980s.¹⁸⁶ However, like claims of racial bias, there have been no statistics that support a claim that gender bias exists in the application of the Stand Your Ground law in Louisiana. In fact, one of the biggest arguments that gender bias does not exist can be seen in the form of the 4'11", sixty-seven-year-old woman who served as one of the creators of the original Stand Your Ground law and one of its most steadfast proponents.¹⁸⁷ Marion Hammer was the first female president of the National Rifle Association and a "chief architect" of Florida's Stand Your Ground law.¹⁸⁸

Hammer rejects the argument of gender bias in the laws and says instead that Stand Your Ground laws aim to protect women.¹⁸⁹ Hammer supports the idea that the duty to retreat is harmful for anyone facing a criminal attack, and goes on to argue that this is especially so for women.¹⁹⁰ Hammer tenaciously defends the Stand Your Ground laws' eradication of the duty to retreat, saying: "You can't expect a victim to wait and ask, 'Excuse me, Mr. Criminal, are you going to rape me and kill me, or are you just going to beat me up and steal my television?'"¹⁹¹ Instead, Hammer opines that the Stand Your Ground laws allow women to stand up to their attacker without facing repercussion, instead of turning and running, which would put them in an even more vulnerable position.¹⁹²

As Louisiana has no statistics showing any disparate impact of the state's Stand Your Ground law on women, the evidence remains purely anecdotal.¹⁹³ Similar to the case of George Zimmerman, the conviction of Marissa Alexander, while

186. Jeannie Suk, *The True Woman: Scenes From the Law of Self-Defense*, 31 HARV. J. L. & GENDER 237, 252 (2008) (discussing feminist backlash regarding the cohabitation exceptions to the Castle Doctrine in traditional American self-defense laws).

187. Joshua Dressler, *Feminist (Or "Feminist") Reform of Self-Defense Law: Some Critical Reflections*, 93 MARQ. L. REV. 1475, 1483 (2010).

188. Ann O'Neill, *NRA's Marion Hammer stands her ground*, CNN (Apr. 15, 2012, 9:20 AM), <http://www.cnn.com/2012/04/15/us/marion-hammer-profile/index.html>.

189. Suk, *supra* note 186, at 267.

190. *Id.* at 266.

191. *Id.*

192. *Id.*

193. Various searches on Google, Westlaw, and LexisNexis revealed no statistics or other evidence of gender bias in the application of Louisiana's Stand Your Ground law.

apparently unjust, is merely one of many cases nationwide of women invoking Stand Your Ground protection.¹⁹⁴ The case of Marissa Alexander, on its own, does not provide proof of bias in the law's application. Based on this lack of evidence of gender and racial bias in the application of Stand Your Ground laws in Louisiana and the neighboring state of Florida, allegations of discrimination in the law appear to be unsupported and should not serve as a reason for the law's repeal.

B. AMENDMENTS TO LOUISIANA'S STAND YOUR GROUND LAW

Although the aforementioned challenges raised against Louisiana's Stand Your Ground law lack veracity, this does not mean that the law is without fault. Subsection 1 first explores the flaws evident in Louisiana's law that cause it to lack effectiveness in application. Next, Subsection 2 provides a series of amendments that must be made to Louisiana's justifiable homicide statute in order for it to act as effectively as intended.

1. INEFFECTIVENESS IN THE APPLICATION OF LOUISIANA'S CURRENT STAND YOUR GROUND LAW

Architects behind the Stand Your Ground laws have recognized that one of the main objectives behind the laws is to allow victims of legitimate attacks to escape prosecution for using deadly force when it is absolutely necessary.¹⁹⁵ However, in

194. Ernestine Broxsie, a sixty-two-year-old black female resident of Tallahassee, Florida fatally shot a tenant renting a mobile home which she owned after an oral altercation turned violent. *Florida's Stand Your Ground Law: Case 186*, TAMPA BAY TIMES (July 14, 2013), http://tampabay.com/stand-your-ground-law/cases/case_186 (last updated Aug. 10, 2013). Broxsie received immunity at a pre-trial hearing under Florida's Stand Your Ground law in 2008. *Id.* In 2011, Rotesia Bryant, a twenty-nine-year-old black female was charged with manslaughter after she stabbed her boyfriend twice in the chest with a pair of scissors, allegedly after he attacked her. *Florida's Stand Your Ground Law: Case 250*, TAMPA BAY TIMES, http://tampabay.com/stand-your-ground-law/cases/case_250 (last updated Aug. 10, 2013). After finding that Bryant's boyfriend had seven domestic incidents filed under his name, the judge determined that that Bryant had reasonably acted in self-defense and dismissed the case after a Florida Stand Your Ground pre-trial immunity hearing. *Id.* In 2012, Sonya Maret, a thirty-three-year-old white female, physically assaulted her husband in their front yard. *Florida's Stand Your Ground Law: Case 215*, TAMPA BAY TIMES, http://tampabay.com/stand-your-ground-law/cases/case_215 (last visited Aug. 10, 2013). Despite allegations by the husband that Maret had "gone crazy," the judge granted immunity, finding that Maret had acted appropriately under Florida's Stand Your Ground law. *Id.*

195. Michelle Jaffe, Comment, *Up in Arms over Florida's New "Stand Your Ground" Law*, 30 NOVA L. REV. 155, 175 (2005).

Louisiana, the law has been disparately applied to protect individuals that engage in street-fighting and gang violence, while failing to adequately protect individuals who resort to deadly force against intruders in their home.¹⁹⁶ One of the most controversial cases regarding Louisiana's Stand Your Ground law was the fatal shooting of Jamonta Miles, a black eighth grade boy, by twenty-one-year-old black male, Byron Thomas, in Raceland, Louisiana.¹⁹⁷ According to Thomas, Miles was an alleged member of a small neighborhood gang and engaged in a "Facebook feud" with Raceland residents in the days leading up to the shooting.¹⁹⁸ On the day of the shooting, Miles and seven friends and alleged gang members piled into an SUV and drove through the neighborhood to, as Thomas claims, "terroriz[e] people at random."¹⁹⁹ After the group confronted Thomas, the car began driving away, at which point Thomas began shooting at the fleeing car with one shot hitting Miles in the head, killing him.²⁰⁰

Even before identifying Thomas as the gunman, the parish sheriff recognized that Thomas had "stood his ground," implying that Thomas had acted within his legal means.²⁰¹ In contrast, the six teenagers who were in the car with Miles at the time of the shooting were arrested and charged with various offenses, including criminal street gang activity and possession of alcoholic beverages.²⁰² Despite an investigation revealing that the teenagers did not have handguns in their possession during the drive, two of the six boys were ultimately convicted of simple assault.²⁰³ Thomas, on the other hand, was neither arrested nor

196. See DeBerry, *supra* note 6; *Sgt. Jason Rolls finally headed to trial, or is he?*, BUSTED IN ACADIANA (Apr. 9, 2013), <http://www.bustedinacadiana.com/2013/04/sgt-jason-rolls-finally-headed-to-trial-or-is-he/>.

197. DeBerry, *supra* note 6.

198. Katie Urbaszewski, *Case closed on teen's shooting death*, HOUMA TODAY (Feb. 23, 2012, 3:54 AM) [hereinafter Urbaszewski, *Case closed*], <http://www.houmatoday.com/article/20120223/HURBLOG/120229817?p=all&tc=pgall>.

199. DeBerry, *supra* note 6.

200. *Id.*

201. *Id.*

202. *Six teens arrested in connection with shooting death of 8th grader*, WWLTV.COM (Jan. 3, 2012, 6:34 PM), <http://www.wwltv.com/news/lafourchettebonne/Six-teens-arrested-in-connection-with-shooting-death-of-8th-grader-136625353.html>.

203. Katie Urbaszewski, *Local couple seeks 'justice' in son's slaying*, HOUMA TODAY (Mar. 27, 2012, 10:57 AM) [hereinafter Urbaszewski, *Local couple seeks 'justice'*], <http://www.houmatoday.com/article/20120327/ARTICLES/120329597?p=2&tc=pg>.

named as a suspect.²⁰⁴ Further, a grand jury issued a no bill²⁰⁵ and declined to indict Thomas on the evidence presented.²⁰⁶ The sheriff commented on the grand jury's decision, saying, "While tragic, to the extent that Jamonta Miles'[s] life was taken, under the circumstances there was no culpability."²⁰⁷

The story of Jamonta Miles represents just one example of how the Louisiana Stand Your Ground law has failed to achieve its intended objectives. The car had already begun driving in the opposite direction from Thomas when he began firing his 9-millimeter handgun.²⁰⁸ Thus, it is unlikely that Thomas could have reasonably believed that shooting his handgun was necessary to protect himself against imminent death or grievous bodily harm. Instead, this evidence pointed to the fact that Thomas shot at the car simply to get revenge on Miles and the other members of the neighborhood gang for "terrorizing" him. Deadly force performed out of revenge is not protected by the Stand Your Ground laws; instead, the laws are actually aimed at preventing such acts.²⁰⁹ The unjustified death of Jamonta Miles undermines the effectiveness and reputability of the Louisiana Stand Your Ground law.

Not only has Louisiana's Stand Your Ground law erroneously protected individuals when the use of deadly force could have been avoided, but the law has also failed to provide adequate protection to those individuals who most deserve it. Jason Rolls was a twenty-five-year-old staff sergeant with the U.S. Air Force and a resident of Krotz Springs, Louisiana at the time he was attacked by an intruder.²¹⁰ On his wedding night in May 2010, Jason and his newlywed, Twaila, were surprised to hear loud banging on their door.²¹¹ Before Twaila could answer

204. Urbaszewski, *Local couple seeks 'justice,' supra* note 203.

205. The term "no bill" is defined as "[a] grand jury's notation that insufficient evidence exists for an indictment on a criminal charge." BLACK'S LAW DICTIONARY 1145 (9th ed. 2009).

206. Urbaszewski, *Case closed, supra* note 198.

207. *Id.*

208. DeBerry, *supra* note 6.

209. One of the common law bases for the Castle Doctrine (on which Stand Your Ground laws are based) was recognized by Lord Hale stating, "private persons are not trusted to take capital revenge one of another." See 1 SIR MATTHEW HALE, THE HISTORY OF THE PLEAS OF THE CROWN 481 (Robert H. Small, 1st Am. ed. 1847) (1678).

210. *Sgt. Jason Rolls finally headed to trial, or is he?, supra* note 196.

211. Gholmesjr, *Injustice in Louisiana – Stand-Your-Ground Law Ignored*, CNN

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the door, her ex-husband and father of her children, Michael Hall, forcibly entered the home.²¹² Twaila asked Hall to leave, but he refused.²¹³ After orally arguing with Twaila, Hall threw her to the floor and ran into the living room after Rolls.²¹⁴ The report states that Hall, who is five inches taller and seventy-five pounds heavier than Rolls, threw Rolls to the ground.²¹⁵ In response, Rolls grabbed his gun, located nearby, and shot and killed Hall.²¹⁶

Although the incident occurred in May 2010, Rolls's trial did not occur until nearly three years later, in April 2013.²¹⁷ During this time, Rolls was either imprisoned or placed under house arrest.²¹⁸ Although a jury recently acquitted Rolls of manslaughter, he was forced to spend three years of his life either behind bars or confined to his Air Force base for an act that was ultimately deemed legal under Louisiana law.²¹⁹

If any defendant should be deserving of Stand Your Ground protection, it should be Rolls. However, under the Louisiana justice system, he did not adequately receive such protection, and was instead prosecuted for doing what he reasonably believed was necessary to protect his life and that of his newlywed. The evidence suggests that Rolls resorted to using his gun only after determining that such action was necessary to save himself and his wife from Hall's unprovoked attack.²²⁰ Rolls was pinned to the floor with Hall, who, although unarmed, was several inches taller and a substantial amount heavier, on top of him.²²¹ Unlike the case of Byron Thomas, the facts surrounding Rolls's shooting indisputably point to the fact that Rolls reasonably believed that his only option to protect himself was through the use of deadly force.²²² As such, the Stand Your Ground provision of Louisiana's justifiable homicide statute should have justified Rolls's action,

IREPORT (Apr. 13, 2012), <http://ireport.cnn.com/docs/DOC-775632>.

212. Gholmesjr, *supra* note 211.

213. *Id.*

214. *Id.*

215. Davis, *supra* note 1; *Sgt. Jason Rolls finally headed to trial, or is he?*, *supra* note 196.

216. *Sgt. Jason Rolls finally headed to trial, or is he?*, *supra* note 196.

217. Davis, *supra* note 1.

218. *Id.*

219. *Id.*; Gholmesjr, *supra* note 211.

220. Gholmesjr, *supra* note 211.

221. *Id.*

222. *See id.*

and the prosecution should have declined to press charges.

Even without a Stand Your Ground provision, Rolls's shooting should have been protected under the Castle Doctrine provision of Louisiana's statute.²²³ This provision provides that a homicide is justifiable when "committed by a person lawfully inside a dwelling," against a person who has made an "unlawful entry into the dwelling," and the person committing the homicide reasonably believes the deadly force is necessary "to compel the intruder to leave."²²⁴ Hall entered Roll's dwelling without invitation, even before Twaila could reach the door.²²⁵ After entering the home, he refused to leave despite Twaila's objections to his presence, pushed Twaila to the floor, and attacked Rolls.²²⁶ Based on this information, it is logical to determine that Rolls reasonably believed deadly force was necessary to ensure that Hall left his home. There is no way to know what Hall's intention was upon entering the house, but based on his actions prior to the shooting, it is reasonably evident that he intended to cause harm to Rolls and possibly Twaila.²²⁷ Furthermore, even without these facts indicating that Jason Rolls reasonably feared for his life, the Louisiana Stand Your Ground statute sets forth a presumption that individuals lawfully in their home had a reasonable belief that deadly force was necessary to compel an unlawful intruder to leave.²²⁸ Therefore, under Louisiana's Stand Your Ground law, Rolls should have been immunized from prosecution under both his right to stand his ground in a place he lawfully deserved to be and his right to protect himself in his own home.

The difference in results between the cases involving Jason Rolls and Byron Thomas are overwhelming, and can only be attributed to an improper application of the law. Allowing a man to go free after shooting at a fleeing car of teenagers, none of whom possessed a handgun, while imprisoning a young man for several years without trial for protecting himself against a man using physical force against him in his own home, is incredibly unjust. The application of Louisiana's Stand Your Ground law reveals serious problems associated with the law that must be

223. See LA. REV. STAT. ANN. § 14:20(A)(4)(a) (2012).

224. *Id.*

225. Gholmesjr, *supra* note 211.

226. *Id.*

227. See *id.*

228. LA. REV. STAT. ANN. § 14:20(B).

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corrected in order for the statute to work as intended. In order to work as effectively as envisioned by legislators, a number of changes must be made to Louisiana's self-defense law.

2. PROPOSED AMENDMENTS TO LOUISIANA'S SELF-DEFENSE LAW

In order to mitigate the negative consequences of Louisiana's self-defense law and to ensure its success in protecting individuals validly exercising deadly force to protect their lives, the Louisiana legislature should consider five amendments to the law. The Louisiana legislature should amend the justifiable homicide statute to (1) specify that Stand Your Ground protection does not apply to first aggressors who do not retreat; (2) provide that individuals cannot use deadly force against retreating victims; (3) create a state-wide record keeping system for Stand Your Ground cases; and (4) allow the availability of an opportunity to retreat to be considered by triers of fact in determining cases in which a Stand Your Ground defense is asserted.

i. First Aggressors Should Not Receive Stand Your Ground Protection

While the intent of Stand Your Ground laws has been to protect those who reasonably believe they are in danger of imminent death or injury, nowhere in the Louisiana statute is it specified that the protection from prosecution does not apply to the individual who initiated the confrontation.²²⁹ Without this provision, first aggressors, individuals who instigate or harass others to provoke violence, may receive immunity for using deadly force against their victim. In order to cure this deficiency, an amendment must be made as part (E) of the statute that provides:

"The provisions of this statute do not pertain to individuals labeled as first aggressors, who initiate the confrontation or harass others, unless these individuals retreat or attempt to retreat prior to resorting to the use of deadly force."

This amendment would ensure that first aggressors do not receive Stand Your Ground protection for using deadly force against others unless they first retreat or attempt to retreat from

229. See LA. REV. STAT. ANN. § 14:20(B).

the confrontation they initiated.

Several states have included first aggressor provisions in their self-defense laws. For instance, Alabama's Stand Your Ground law contains an express provision prohibiting Stand Your Ground protection for first aggressors.²³⁰ The statute states:

[A] person is not justified in using physical force if . . . [h]e or she was the initial aggressor, except that his or her use of physical force upon another person under the circumstances is justifiable if he or she withdraws from the encounter and effectively communicates to the other person his or her intent to do so, but the latter person nevertheless continues or threatens the use of unlawful physical force.²³¹

The Alabama statute should serve as a model for Louisiana in amending their statute. The Alabama statute refuses to provide protections to initial aggressors, *unless* the aggressor attempts to retreat prior to resorting to deadly force.²³² Similarly, Arizona's self-defense statute contains a provision exempting first aggressors from legal protection unless they first retreat, stating:

The threat or use of physical force against another is not justified . . . if the person provoked the other's use or attempted use of unlawful physical force, unless:

- (a) The person withdraws from the encounter or clearly communicates to the other his intent to do so reasonably believing he cannot safely withdraw from the encounter; and
- (b) The other nevertheless continues or attempts to use unlawful physical force against the person.²³³

While the Arizona statute does not use the specific term "initial aggressor," the aforementioned provision practically denies protection to initial aggressors.²³⁴ These statutes show that the inclusion of an initial aggressor provision is not a radical idea and only serves to clarify the purpose and meaning of the text of the statute.

230. ALA. CODE § 13A-3-23(c)(2) (2013).

231. *Id.*

232. *Id.*

233. ARIZ. REV. STAT. ANN. § 13-404(B)(3) (2013).

234. *Id.*

In 2012, Louisiana Senator J.P. Morrell filed Senate Bill 738, in which he proposed to close the loophole in the Louisiana self-defense statute that protects first aggressors.²³⁵ Under this bill, the protection of the self-defense law would be unavailable for an individual who, prior to the use of deadly force, followed the victim or behaved in a way that would reasonably lead the victim to believe he was in danger of attack.²³⁶ This bill provided an exception for police, private investigators and insurance investigators working in the scope of their duties, and also exempted those who have completely retreated after the conduct and prior to using deadly force.²³⁷ However, although the bill was eventually passed, the Senate Committee amended the bill to delete all reference to first aggressors, thereby continuing to allow first aggressors to reap the benefits of Louisiana's Stand Your Ground Law.²³⁸

Without this amendment, it is possible that George Zimmerman would have also been acquitted, or would have escaped prosecution entirely, if he had shot Trayvon Martin and raised a Stand Your Ground defense in Louisiana. However, under an amendment to the Louisiana justifiable homicide statute denying Stand Your Ground protection to first aggressors, Zimmerman would have been arrested on-site, with charges brought against him immediately. Zimmerman followed Martin,

235. Jeff Adelson, *Trayvon Martin case produces bill requiring probes into self-defense killings*, TIMES PICAYUNE (Apr. 6, 2012, 10:00 AM) [hereinafter Adelson: Apr. 6], http://www.nola.com/politics/index.ssf/2012/04/bill_would_require_probe_into.html.

236. *Id.* ("Morrell's bill would invalidate self-defense claims in cases where the killer had followed the other person in a way that would reasonably cause fear or apprehension of being attacked."); see S.B. 738, 2012 Reg. Sess. (La. 2012), available at <http://www.legis.la.gov/Legis/ViewDocument.aspx?d=788735&n=SB738%20Original> ("A person who intentionally follows another person to cause a reasonable person to feel alarmed, to suffer emotional distress, or to place the person in reasonable apprehension of receiving a battery or other crime cannot claim the right of self-defense unless he withdraws from the conduct in good faith and in such a manner that the other person knows or should know that the aggressor desires to withdraw and discontinue the conduct.").

237. Adelson: Apr. 6, *supra* note 235.

238. The Act now instead reads: "Section 1. R.S. 14:20.1 is hereby enacted to read as follows: §20.1. Investigation of death due to violence or suspicious circumstances when claim of self-defense is raised: Whenever a death results from violence or under suspicious circumstances and a claim of self-defense is raised, the appropriate law enforcement agency and coroner shall expeditiously conduct a full investigation of the death. All evidence of such investigation shall be preserved." Act, No. 690, 2012 La. Sess. Law Serv. (West).

despite explicit instructions from a 911 operator to refrain from doing so.²³⁹ As a result of this evidence, the police and courts would likely find that Zimmerman was immediately “follow[ing] the other person in a way that would reasonably cause fear or apprehension of being attacked,²⁴⁰ thereby precluding Zimmerman from receiving Stand Your Ground protection. Although this shooting did not occur in Louisiana, the similarities between the text and application of the Louisiana and Florida laws imply that a similar situation could occur in Louisiana. An amendment to the Louisiana statute denying protection to first aggressors would prevent such injustice from occurring in the state and would improve the effectiveness of the Stand Your Ground law.

Critics of Senator Morrell’s and similar bills may argue that the amendment is unnecessary because the Louisiana statute already addresses denying protection to first aggressors, by extending protection only to those “not engaged in unlawful activity and who is in a place where he or she has a right to be”²⁴¹ However, this is not entirely accurate. These critics, including Chris Rager, a lobbyist for the National Rifle Association, further contend that an amendment specifically addressing the denial of protection to first aggressors will “cause confusion rather than clarify” the act.²⁴² However, contrary to Rager’s contention, an amendment expressly denying Stand your Ground protection to first aggressors will only succeed in clarifying the act and better informing Louisiana citizens of their legal rights. The term “unlawful activity” is not expressly defined within the statute, and it is likely that most Louisianans are uninformed of what conduct this term entails. A provision in the statute clearly stating that first aggressors will not receive Stand Your Ground protection under the law will better convey to Louisianans that they are not entitled to begin confrontations that escalate to deadly force and still receive legal protection. Further, as discussed above, under the current Louisiana statute, it is possible that George Zimmerman could have escaped

239. Blow, *supra* note 127.

240. Adelson: Apr. 6, *supra* note 235; see S.B. 738, 2012 Reg. Sess. (La. 2012), available at <http://www.legis.la.gov/Legis/ViewDocument.aspx?d=788735&n=SB738%20Original>.

241. LA REV. STAT. ANN. § 14:20 (C) (2012).

242. Michelle Millhollon, *Self-defense bill shelved by panel*, ADVOCATE, May 23, 2012, available at 2012 WLNR 10890846.

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prosecution in Louisiana, since merely following another individual on one occasion is not considered “unlawful activity” under Louisiana law. However, while not necessarily unlawful, this type of conduct would reasonably lead individuals being followed to believe they were in danger of a physical attack. Therefore, the Louisiana statute should recognize that although conduct may not be per se unlawful, it may still constitute “first aggressor conduct” which will prohibit the individual engaged in that conduct from receiving Stand Your Ground protection.

Expanding on the idea of denying protection to first aggressors, Louisiana Senator Yvonne Dorsey-Colomb proposed an excessively extreme variation on Senator Morrell's proposition.²⁴³ She filed a bill promoting an amendment to the Stand Your Ground law that prohibited the law from protecting first aggressors, or those that begin a confrontation, even if they have completely withdrawn prior to using deadly force.²⁴⁴ This bill refused to restore protection to individuals who had fully retreated and attempted to remove themselves from the confrontation prior to having to resort to using deadly force.²⁴⁵ In contrast, under Senator Morrell's bill, Stand Your Ground protection would apply to first aggressors if they had fully retreated from the conflict prior to resorting to deadly force.²⁴⁶

Senator Dorsey-Colomb supported her bill on the premise that individuals who begin a physical confrontation should not be permitted to kill their opponent out of malice or anger and escape prosecution merely because they can say they attempted to walk away for a second before shooting.²⁴⁷ The Louisiana Senate Committee rightfully rejected the bill, finding that the bill was contrary to the principles of common law self-defense and would deny individuals protection when a fight “spiraled out of control,” allowing them no other opportunity to save themselves than

243. Jeff Adelson, *Trayvon Martin case inspires bills in Louisiana Legislature*, (Apr. 24, 2012, 8:30 AM) [hereinafter Adelson: Apr. 24], http://www.nola.com/politics/index.ssf/2012/04/trayvon_martin_killing_inspire.html.

244. S.B. 719, 2012 Reg. Sess. (La. 2012), available at <http://www.legis.la.gov/Legis/ViewDocument.aspx?d=788676&n=SB719%20Original>.

245. See Adelson: Apr. 6, *supra* note 235; Adelson: Apr. 24, *supra* note 243; Capitol news bureau, *Trayvon Martin bill fails in committee*, *ADVOCATE* (Apr. 24, 2012), <http://blogs.theadvocate.com/politicsblog/2012/04/24/trayvon-martin-bill-fails-in-committee/>.

246. S.B. 738, 2012 Reg. Sess. (La. 2012), available at <http://www.legis.la.gov/Legis/ViewDocument.aspx?d=788735&n=SB738%20Original>.

247. See Adelson: Apr. 24, *supra* note 243; Capitol news bureau, *supra* note 245.

through the use of deadly force.²⁴⁸

Under the new first aggressor amendment, the denial of protection to first aggressors will be limited. It will not deny protection to all first aggressors, only those who fail to retreat or at least fail to attempt to do so. While there is a fine distinction, this distinction must be acknowledged by the statute in order to ensure the policies behind Stand Your Ground laws are upheld and that only the individuals deserving of it receive Stand Your Ground protection. Denying protection to an individual who fully retreated before resorting to deadly force would undermine the purpose of the Stand Your Ground law. While protection for first aggressors should be diminished in Louisiana's Stand Your Ground law, there needs to be a clear line where this is drawn.

ii. Presumption Against Reasonable Belief When Victim is Retreating

Another major change that must be made to the Louisiana law in order to ensure its effectiveness is an amended provision to part (C) of the statute²⁴⁹ which would state that:

There shall be a presumption that a person did not have a reasonable belief that deadly force was necessary to protect himself from imminent death or serious bodily injury when deadly force is used against a victim (even if the victim was the first aggressor), if the victim retreated or began retreating prior to the use of deadly force.

In 2012, Louisiana Representative Roy Burrell agreed with this proposed amendment and filed a bill to amend Louisiana's justifiable homicide statute, providing that a person may not receive Stand Your Ground protection if he uses deadly force against an aggressor after the aggressor retreats.²⁵⁰ Unfortunately, this bill was shelved by a Senate Committee.²⁵¹

Amendments such as the provision proposed above and

248. Adelson: Apr. 24, *supra* note 243.

249. The original text of this provision of the statute reads: "A person who is not engaged in unlawful activity and who is in a place where he or she has a right to be shall have no duty to retreat before using deadly force as provided for in this Section, and may stand his or her ground and meet force with force." LA. REV. STAT. ANN. § 14:20(C) (2012).

250. H.B. 1100, 2012 Reg. Sess. (La. 2012), available at <http://www.legis.la.gov/legis/ViewDocument.aspx?d=788137&n=HB1100%20Original>.

251. Millhollon, *supra* note 242.

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Representative Burrell's bill would solve the injustice caused by the shooting of Jamonta Miles by Byron Thomas. In that case, Thomas shot at a car filled with eight teenagers, killing Miles.²⁵² Despite Thomas's claim that he shot because the group of boys had been "terrorizing" him, the evidence is clear that Thomas shot at the car as it was driving away from him.²⁵³ Under Rep. Burrell's proposed amendment, Thomas would not be able to enjoy Louisiana's Stand Your Ground protection, because despite being an "aggressor," Miles had been retreating at the time deadly force was used.²⁵⁴ As soon as the car began driving away, Thomas should have lost his freedom to use deadly force against Miles and his friends, even if he claims that he believed that he was still in danger.

This bill is logical, effective, and should not have been shelved by the Senate Committee. Critics may argue that a provision such as that described in Representative Burrell's bill is unnecessary since the retreating of an attacker would be sufficiently considered by the court in determining whether the individual "reasonably believed" deadly force was necessary to protect himself. Although it is assumed that a court will generally find there is no "reasonable belief" of imminent danger when one uses deadly force against a retreating aggressor, this is clearly not always the case as seen with the immunity granted to Byron Thomas. This amendment is necessary to help ensure that the protection granted by the Stand Your Ground law is not abused and is only provided to those individuals who truly have a "reasonable" belief that they were in danger.

iii. Creation of a Record Keeping System to Document the Use of Stand Your Ground Protection

In order to ensure that the law is working as it was intended, strict record-keeping procedures need to accompany the law. Although a specific written amendment to the Louisiana statute is not required to do so, the Louisiana legislature should work to construct a reliable, efficient record keeping system. There must be specific records detailing the facts and circumstances surrounding each case in which Stand Your Ground protection

252. DeBerry, *supra* note 6; *see supra* Section III(B)(1).

253. DeBerry, *supra* note 6.

254. *See* H.B. 1100, 2012 Reg. Sess. (La. 2012), *available at* <http://www.legis.la.gov/legis/ViewDocument.aspx?d=788137&n=HB1100%20Original>.

has been invoked. Statistics may reveal ineffectiveness or biases in the application of the law. However, as stated above, these numbers mean nothing without knowledge of the circumstances in which the homicides occurred. Statistics produced through the use of a regulated Stand Your Ground record system, detailing the surrounding circumstances of every homicide claimed to have been committed in self-defense, will become useful in determining the effects of the law. As seen throughout this Comment, the lack of statistics and evidence of the law's use clearly display the need for such a record-keeping system. As a result of these records, legislators will be able to see where the faults of the law lie, and will be better able to act to repair them, ensuring the law works effectively as intended.

iv. Triers of Fact Must be Permitted to Consider Defendants' Opportunity to Retreat

Finally, the current law prohibits finders of fact, including the judge and jury, from considering whether the defendant had an opportunity to retreat prior to engaging in deadly force in order to determine whether the defendant acted with a "reasonable belief" that such force was necessary.²⁵⁵ Under this provision, even if an individual had the opportunity to retreat and escape without suffering even the slightest injury, yet chose instead to resort to deadly force, he will likely obtain the same immunity as an individual who had no other option than to resort to deadly force.²⁵⁶ The premise behind this is entirely unjust. Stand Your Ground laws are aimed at providing attacked individuals with legal protection after taking the necessary steps to defend themselves.²⁵⁷ However, Stand Your Ground laws should not condone the actions of individuals who could have simply walked away from an altercation, thereby saving a life.

While considering whether the defendant had an opportunity to retreat should not be dispositive in determining whether a defendant possessed the requisite "reasonable belief," this should at least be a factor considered during trial. Allowing this

255. LA. REV. STAT. ANN. § 14:20(D) ("No finder of fact shall be permitted to consider the possibility of retreat as a factor in determining whether or not the person who used deadly force had a reasonable belief that deadly force was reasonable and apparently necessary to prevent a violent or forcible felony involving life or great bodily harm or to prevent the unlawful entry.").

256. *See id.*

257. *See Policy Purpose of Stand Your Ground Laws, supra* note 27.

provision to remain in the statute increases the likelihood that Louisiana's Stand Your Ground law will be used to protect individuals who are not deserving of it. While a few Stand Your Ground states, such as Mississippi,²⁵⁸ contain similar provisions preventing triers of fact from considering a possible opportunity to retreat, the vast majority of Stand Your Ground legislation contains no such provision.²⁵⁹

Looking once again to the shooting of Jamonta Miles,²⁶⁰ Byron Thomas's ability to retreat from the frightening situation without any risk of harm should have been a factor that the grand jury was able to consider when determining whether to indict. As stated before, at the time Thomas fired his handgun, the car carrying Miles and his friends was driving away.²⁶¹ Thomas had a completely risk-free opportunity to escape the threat posed by Miles and his friends, even if he remained where he was.²⁶² However, the current Louisiana statute prohibited the grand jury from considering Thomas's ability to retreat. Instead, the grand jury determined that Thomas reasonably believed he was in danger and that deadly force was necessary to protect himself.²⁶³ If the grand jury was able to consider the possibility that Thomas could easily have avoided any bodily harm—which would have saved the life of an eighth grade boy—it is likely that the result would be different.

IV. CONCLUSION

The misconceptions concerning Stand Your Ground laws can be seen throughout the immense media publicity surrounding these laws in the past few years. Challenges that the laws are applied in ways that promote racial and gender bias have only

258. MISS. CODE ANN. § 97-3-15(3) (West 2012) (“[N]o finder of fact shall be permitted to consider the person's failure to retreat as evidence that the person's use of force was unnecessary, excessive or unreasonable.”).

259. See *Currier*, *supra* note 12 (providing access to various states' “Stand Your Ground” laws).

260. See *supra* Section III(B)(1). Jamonta Miles, a thirteen-year-old black male, was shot by Byron Thomas while Miles was driving away from Thomas in an SUV with several friends. DeBerry, *supra* note 6. Thomas claims the shooting was made in self-defense and that he had a reasonable belief that deadly force was necessary because Miles and his friends had “terrorized” him. See *id.*; Urbaszewski, *Local couple seeks 'justice,' supra* note 203.

261. Urbaszewski, *Local couple seeks 'justice,' supra* note 203.

262. See *generally id.*

263. See *id.*; Urbaszewski, *Case closed, supra* note 198.

been exacerbated by recent cases, such as the acquittal of George Zimmerman and the conviction of Marissa Alexander. However, after evaluating the effect of these laws in the state of Louisiana, it does not appear as though these allegations hold great weight. Louisiana has not revealed bias in the application of its Stand Your Ground law, either by race or gender; however, this does not mean the law is without fault.

The Stand Your Ground law in Louisiana is especially problematic due to the immensely high murder rate of the state.²⁶⁴ To an outsider, it would appear as though the last law this state needs is one that promotes murder and allows murderers to walk free. However, this might be exactly what Louisiana needs.

Louisiana's Stand Your Ground law allows individuals who have a reasonable belief of imminent danger of death or serious bodily injury to use deadly force against their attacker, without first having a duty to retreat.²⁶⁵ In one of the most dangerous states in the world, this law is almost a necessity. The risk of violence is great, and individuals should not face criminal prosecution, which is both costly and damning to an individual's reputation, for doing what is reasonably necessary to protect themselves.

Although the idea behind the law is greatly beneficial to the state of Louisiana, in order for this law to achieve its goals, serious changes must be made to its statutory provisions. As seen in cases throughout Louisiana, including the shooting of Jamonta Miles and the incarceration of Jason Rolls, the state's Stand Your Ground law has been ineffectively applied.

Furthermore potential questions about application of the law continue to arise in new scenarios within Louisiana. One recent example of this is the shooting by Merritt Landry, a homeowner in the Faubourg Marigny neighborhood of New Orleans, of fourteen-year-old Marshall Coulter.²⁶⁶ In the middle of the night, Landry was awakened to find Coulter inside his gated yard,

264. See *Nationwide Murder Rates*, supra note 28; see also supra Section III(A).

265. LA. REV. STAT. ANN. § 14:20 (2012).

266. Naomi Martin & Helen Freund, *Unarmed teen shot inside homeowner's fenced yard, but not breaking into home, NOPD warrant says*, TIMES PICAYUNE (July 26, 2013, 9:44 PM), http://www.nola.com/crime/index.ssf/2013/07/marigny_homeowner_shooting.html#incart_most-comments.

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nearly thirty feet from his front door.²⁶⁷ Believing Coulter intended to break into his home, and upon seeing him make a “move, as if to reach for something,” Landry sought to protect his pregnant wife and baby daughter by shooting Coulter in the head.²⁶⁸ After the shooting, it was revealed that Coulter had a reputation for stealing, but police also determined that he was unarmed at the time of the shooting.²⁶⁹ At the time of publication of this Comment, Coulter is in critical condition.²⁷⁰ Landry was initially arrested and released on bond.²⁷¹ The City of New Orleans currently holds its breath to see whether Landry will be indicted for murder charges and brought to trial.²⁷² If so, it is very likely a ‘Stand Your Ground’ defense will be raised by Landry, which will continue to bring questions about the effectiveness of the statute to the forefront of Louisiana criminal law.²⁷³ Thus, in order to ensure that the law protects only those

267. See Helen Freund, *Legal experts say Landry will have to prove ‘imminent danger’ in Marigny home shooting*, TIMES PICAYUNE (July 29, 2013, 8:15 PM), http://www.nola.com/crime/index.ssf/2013/07/legal_experts_say_landry_will.html.

268. See *id.*

269. James Varney, *Tale of two shootings*, TIMES PICAYUNE (July 31, 2013), available at 2013 WLNR 18777560 (noting that Coulter’s older brother described Coulter as a “professional thief”).

270. Freund, *supra* note 267.

271. As of the time of the publication of this Comment, Merritt Landry has been released from prison on a \$100,000 bond. Naomi Martin, *Marigny man out of jail in teen’s shooting DA had questioned eligibility for bond*, TIMES PICAYUNE (July 31, 2013), available at 2013 WLNR 18778461.

272. Although he has not yet been indicted, experts have noted that it is likely the District Attorney’s Office will prosecute Landry for either second-degree murder or second-degree attempted murder, contingent on the fate of Marshall Coulter. See Freund, *supra* note 267; John Harper, *Activists gather near Merritt Landry’s home, call for his indictment in shooting of 14-year-old*, TIMES PICAYUNE (Aug. 24, 2013, 10:56 PM), http://www.nola.com/crime/index.ssf/2013/08/activists_in_the_marigny_call.html.

273. It is also possible that Landry could raise the defense that his acts under Louisiana’s version of the Castle Doctrine, deeming deadly force justifiable, “when committed by a person lawfully inside a dwelling . . . against a person who is attempting to make an unlawful entry into the dwelling . . . and the person committing the homicide reasonably believes that the use of deadly force is necessary to prevent the entry or to compel the intruder to leave the premises.” See LA. REV. STAT. ANN. § 14:20(A)(4) (2012). Although Louisiana has never made it expressly clear whether a dwelling is limited to a person’s home, or whether this is extended to a person’s curtilage, such as his yard or driveway, Louisiana courts have noted that a critical element in determining whether a homicide is justified in defending one’s dwelling is whether the intruder “was attempting to or had made an unlawful entry into [the defendant’s] home.” *State v. Ingram*, 45, 546, p. 5 (La. App. 2 Cir. 6/22/11); 71 So. 3d 437, 442, *writ denied*, 77 So. 3d 947 (La. 2012). This implies that the Castle Doctrine may be implicated only when an intruder expressly enters the four

individuals deserving of its protection, the Louisiana legislature must make several amendments to the state's Stand Your Ground law.

First, Stand Your Ground protection should not be used to immunize first aggressors who fail to retreat. An individual that provokes a physical confrontation or follows individuals in a way that would reasonably invoke fear and refuses to retreat from the violence should not be able to then use deadly force against his victim and escape liability.

Second, Stand Your Ground protection should not apply to individuals who use deadly force against their attacker when the attacker is in the process of retreating. The retreat shows that the attacker no longer poses an imminent threat to the individual, and as such, there is no reasonable purpose for shooting, other than to exact revenge or simply out of irrational fear. This violates the purpose of the law: Stand Your Ground protection should be reserved for those who legitimately and reasonably believe they are in imminent danger.

Third, Louisiana should set up a record-keeping system to record all incidents in which Stand Your Ground protection has been invoked. This will allow legislators to more readily understand the impact of the law in the state and how the protection is applied, which will prompt more changes to make the law as effective as possible.

Finally, courts should have the opportunity to consider whether defendants had an opportunity to retreat prior to using deadly force in determining whether the defendant had a "reasonable belief" that such force was necessary. Although this factor would not be dispositive, it would allow judges and juries to better determine when Stand Your Ground immunity is appropriate.

Marion Hammer has noted that a wise woman once said to her regarding Stand Your Ground laws: "[W]e don't shoot to kill, we shoot to live. And that's what it's all about, being able to protect yourself when you're under threat of death or great bodily

walls of the shooter's home. Thus, it is unlikely under *Ingram* that Landry's Castle Doctrine defense would prevail, meaning that a Stand Your Ground defense would likely be his most successful option.

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harm.”²⁷⁴ Enacting amendments to create a more effective Stand Your Ground law for Louisiana will allow residents of Louisiana to protect their lives, first from physical violence, and later from unnecessary criminal liability.

Sara L. Ochs

274. Gina Jordan, *The Lobbyist Behind Florida’s Stand Your Ground Law*, NPR (Mar. 29, 2012, 4:00 AM), <http://www.npr.org/2012/03/29/149591067/the-lobbyist-behind-floridas-stand-your-ground-law>.