

SB

2000

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 5/10/05

FURTHER:

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered SENATE BILL NO. 200

SB 200 USE OF FORCE TO PROTECT SELF/HOME

"An Act relating to defense of self, other persons, and property."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

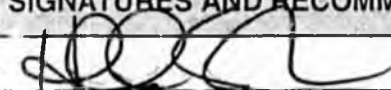
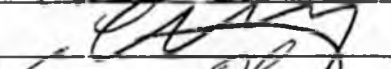
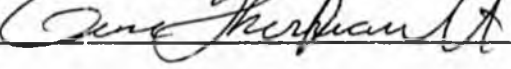
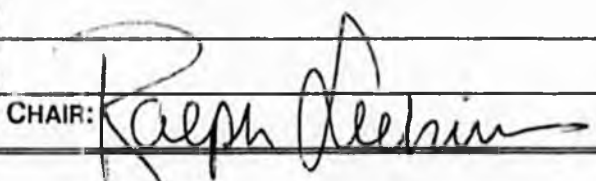
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
			X	
	X			
	X			
CHAIR: 	✓			

Changes in the CS for SB 200

Senate Judiciary / Senator Ralph Seekins – Chair

Section 1.

Makes it clear that peace officers and other emergency service personnel are exempt from the act.

Section 2.

AS 11.81.330 is re-written affirmatively concerning the use of force for self defense (instead of “the defense justification”)

Creates an exception for those not authorized to use force under (a) (1) – (3) of the section if the person has withdrawn from an encounter and effectively communicated the withdrawal to the other person, but the other person persists in continuing the incident by the use of unlawful force.

Section 3.

Changes terminology to “use of deadly force in self defense” and removes the reference to non-deadly force justified under AS 11.81.330 so that the section reads in the affirmative rather than conditional as presently in the statutes.

Lists all the conditions that prevent a person from using deadly force (a) (1 - 4) including clarifying prohibition against on or off duty peace officers.

(b) Allows the option of retreat conditioned upon the person being attacked knows that with complete personal safety for themselves or others being defended they can leave the area of the encounter with the exceptions listed under (b) (1 - 4).

Section 4.

Clarifies the use of force in the affirmative for defending third parties.

Section 5.

Expands the right to use force to not only the owner or person in possession or control of any premises to a guest of that person.

Section 6.

Clarifies the application of the law in the case of car carjacking. Defines the term carjacking and the term motor vehicle as used in AS 28.40.100., an aircraft or watercraft.

Adapted
24-LS1025Y
Luckhaupt
2/1/06

CS FOR SENATE BILL NO. 200()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS THERRIAULT, Dyson, Huggins

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to defense of self, other persons, property, or services."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1. AS 09.65 is amended by adding a new section to read:**

4 **Sec. 09.65.330. Immunity: Use of defensive force.** (a) A person who uses
5 force in defense of self, other persons, or property as permitted in AS 11.81 is not
6 liable for the death of or injury to the person against whom the force was intended to
7 be used, unless the person against whom force was used was a

8 (1) peace officer, whether on or off duty, who was engaged in the
9 performance of official duties; or

10 (2) fire fighter, emergency medical technician, or paramedic engaged
11 in the performance of official duties.

12 (b) The court shall award reasonable attorney fees, court costs, compensation
13 for loss of income, and all expenses incurred by the defendant in defense of a civil
14 action brought by a plaintiff if the court finds that the defendant is not liable under (a)
15 of this section.

* Sec. 2. AS 11.81.330 is amended to read:

Sec. 11.81.330. Justification: Use of nondeadly force in defense of self. (a)

A person is justified in using [MAY USE] nondeadly force upon another when and to the extent the person reasonably believes it is necessary for self-defense [SELF DEFENSE] against what the person reasonably believes to be the use of unlawful force by the other person, unless

(1) the person used the force in [INVOLVED WAS THE PRODUCT OF] mutual combat not authorized by law;

(2) the person claiming self-defense [THE DEFENSE OF JUSTIFICATION] provoked the other's conduct with intent to cause physical injury to the other;

(3) the person claiming self-defense [THE DEFENSE OF JUSTIFICATION] was the initial aggressor; [OR]

(4) the force used [APPLIED] was the result of using a deadly weapon or dangerous instrument the person claiming self-defense [THE DEFENSE OF JUSTIFICATION] possessed while

(A) acting alone or with others to further a felony criminal objective of the person or one or more other persons; or

(B) a participant in a felony transaction or purported transaction or in immediate flight from a felony transaction or purported transaction in violation of AS 11.71;

(C) acting alone or with others with intent to establish or maintain control over a geographic area or neighborhood, or in response to perceived conduct by a rival or perceived rival, or a member or perceived member of a rival group, for control over the area, if the person using deadly force, or the group on whose behalf the person is acting, has a history or reputation for violence among civilians; or

(D) if the weapon used by the person was a firearm that was illegal under state or federal law for the person to possess.

(b) A [IN CIRCUMSTANCES DESCRIBED IN (a)(1) - (a)(3) OF THIS SECTION, THE] person who is not justified in using force in self-defense in the

*Cancelled
Amended
Adopted*

Limiting language -> to protect convicted of felons

1 circumstances listed in (a)(1) - (3) of this section is justified in using [CLAIMING
 2 THE DEFENSE OF JUSTIFICATION MAY USE NONDEADLY] force in self-
 3 defense if that person has withdrawn from the encounter and effectively
 4 communicated the withdrawal to the other person, but the other person persists in
 5 continuing the incident by the use of unlawful force.

6 * Sec. 3. AS 11.81.335 is amended to read:

7 **Sec. 11.81.335. Justification: Use of deadly force in defense of self.** (a)
 8 Except as provided in (b) of this section, a person who is justified in using
 9 nondeadly force in self-defense under AS 11.81.330 may use deadly force in self-
 10 defense upon another person when and to the extent

11 [(1) THE USE OF NONDEADLY FORCE IS JUSTIFIED UNDER
 12 AS 11.81.330; AND

13 (2)] the person reasonably believes the use of deadly force is necessary
 14 for self-defense [SELF DEFENSE] against death, serious physical injury, kidnapping,
 15 sexual assault in the first degree, sexual assault in the second degree, sexual abuse of
 16 a minor in the first degree, or robbery in any degree.

17 (b) A person may not use deadly force under this section if the person knows
 18 that, with complete personal safety and with complete safety as to others being
 19 defended, the person can avoid the necessity of using deadly force by leaving the
 20 area of the encounter [RETREATING], except there is no duty to leave the area
 21 [RETREAT] if the person is

22 (1) on premises

23 (A) that [WHICH] the person owns or leases;

24 (B) where the person resides, temporarily or permanently;

25 or

26 (C) as a guest or express or implied agent of the owner,
 27 lessor, or resident [AND THE PERSON IS NOT THE INITIAL
 28 AGGRESSOR]; [OR]

29 (2) a peace officer acting within the scope and authority of the officer's
 30 employment or a person assisting a peace officer under AS 11.81.380;

31 (3) in a building where the person works in the ordinary course of

1 the person's employment; or

2 (4) protecting a child or a member of the person's household.

3 * Sec. 4. AS 11.81.340 is amended to read:

4 **Sec. 11.81.340. Justification: Use of force in defense of a third person.** A
5 person is justified in using [MAY USE] force upon another when and to the extent
6 the person reasonably believes it is necessary to defend a third person when, under the
7 circumstances as the person claiming defense of another [THE DEFENSE OF
8 JUSTIFICATION] reasonably believes them to be, the third person would be justified
9 under AS 11.81.330 or 11.81.335 in using that degree of force for self-defense [SELF
10 DEFENSE].

11 * Sec. 5. AS 11.81.350(c) is amended to read:

12 (c) A person in possession or control of any premises, or a guest or an express
13 or implied agent of that person, may use

14 (1) nondeadly force upon another when and to the extent the person
15 reasonably believes it is necessary to terminate what the person reasonably believes to
16 be the commission or attempted commission by the other of criminal trespass in any
17 degree upon the premises;

18 (2) deadly force upon another when and to the extent the person
19 reasonably believes it is necessary to terminate what the person reasonably believes to
20 be a burglary in any degree occurring in an occupied dwelling or building.

21 * Sec. 6. AS 11.81.350 is amended by adding new subsections to read:

22 (e) A person

23 (1) in a vehicle, or forcibly removed from a vehicle, may use deadly
24 force upon another when and to the extent the person reasonably believes it is
25 necessary to terminate what the person reasonably believes to be a carjacking of that
26 vehicle;

27 (2) outside of a vehicle may use deadly force upon another when and
28 to the extent the person reasonably believes it is necessary to terminate what the
29 person reasonably believes to be the theft of that vehicle when another person, other
30 than the perceived offender, is inside of the vehicle.

31 (f) A person justified in using force under this section does not have a duty to

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leave or attempt to leave the area of the encounter before using force.

(g) In (e) of this section, "carjacking" means the robbery of a person in possession of ^{that} a vehicle; "vehicle" means a "motor vehicle" as defined in AS 28.40.100, an aircraft, or a watercraft.

* Sec. 7. AS 11.81.350(d) is repealed.

~~robbery~~

Conceptual Annual
Adopted
↓

a vehicle from ~~the~~

24-LS1025Y
Luckhaupt
2/1/06

CS FOR SENATE BILL NO. 200()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

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A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to defense of self, other persons, property, or services."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1.** AS 09.65 is amended by adding a new section to read:

4 **Sec. 09.65.330. Immunity: Use of defensive force.** (a) A person who uses
5 force in defense of self, other persons, or property as permitted in AS 11.81 is not
6 liable for the death of or injury to the person against whom the force was intended to
7 be used, unless the person against whom force was used was a

8 (1) peace officer, whether on or off duty, who was engaged in the
9 performance of official duties; or

10 (2) fire fighter, emergency medical technician, or paramedic engaged
11 in the performance of official duties.

12 (b) The court shall award reasonable attorney fees, court costs, compensation
13 for loss of income, and all expenses incurred by the defendant in defense of a civil
14 action brought by a plaintiff if the court finds that the defendant is not liable under (a)
15 of this section.

1 * Sec. 2. AS 11.81.330 is amended to read:

2 **Sec. 11.81.330. Justification: Use of nondeadly force in defense of self. (a)**

3 A person is justified in using [MAY USE] nondeadly force upon another when and to
4 the extent the person reasonably believes it is necessary for self-defense [SELF
5 DEFENSE] against what the person reasonably believes to be the use of unlawful
6 force by the other person, unless

7 (1) the person used the force in [INVOLVED WAS THE PRODUCT
8 OF] mutual combat not authorized by law;

9 (2) the person claiming self-defense [THE DEFENSE OF
10 JUSTIFICATION] provoked the other's conduct with intent to cause physical injury to
11 the other;

12 (3) the person claiming self-defense [THE DEFENSE OF
13 JUSTIFICATION] was the initial aggressor; [OR]

14 (4) the force used [APPLIED] was the result of using a deadly weapon
15 or dangerous instrument the person claiming self-defense [THE DEFENSE OF
16 JUSTIFICATION] possessed while

17 (A) acting alone or with others to further a felony criminal
18 objective of the person or one or more other persons; or

19 (B) a participant in a felony transaction or purported
20 transaction or in immediate flight from a felony transaction or purported
21 transaction in violation of AS 11.71;

22 (C) acting alone or with others with intent to establish or
23 maintain control over a geographic area or neighborhood, or in response
24 to perceived conduct by a rival or perceived rival, or a member or
25 perceived member of a rival group, for control over the area, if the person
26 using deadly force, or the group on whose behalf the person is acting, has
27 a history or reputation for violence among civilians; or

28 (D) if the weapon used by the person was a firearm that
29 was illegal under state or federal law for the person to possess.

30 (b) A [IN CIRCUMSTANCES DESCRIBED IN (a)(1) - (a)(3) OF THIS
31 SECTION, THE] person who is not justified in using force in self-defense in the

1 circumstances listed in (a)(1) - (3) of this section is justified in using [CLAIMING
2 THE DEFENSE OF JUSTIFICATION MAY USE NONDEADLY] force in self-
3 defense if that person has withdrawn from the encounter and effectively
4 communicated the withdrawal to the other person, but the other person persists in
5 continuing the incident by the use of unlawful force.

6 * Sec. 3. AS 11.81.335 is amended to read:

7 Sec. 11.81.335. Justification: Use of deadly force in defense of self. (a)
8 Except as provided in (b) of this section, a person who is justified in using
9 nondeadly force in self-defense under AS 11.81.330 may use deadly force in self-
10 defense upon another person when and to the extent

11 [(1) THE USE OF NONDEADLY FORCE IS JUSTIFIED UNDER
12 AS 11.81.330; AND

13 (2)] the person reasonably believes the use of deadly force is necessary
14 for self-defense [SELF DEFENSE, against death, serious physical injury, kidnapping,
15 sexual assault in the first degree, sexual assault in the second degree, sexual abuse of
16 a minor in the first degree, or robbery in any degree.

17 (b) A person may not use deadly force under this section if the person knows
18 that, with complete personal safety and with complete safety as to others being
19 defended, the person can avoid the necessity of using deadly force by leaving the
20 area of the encounter [RETREATING], except there is no duty to leave the area
21 [RETREAT] if the person is

22 (1) on premises

23 (A) that [WHICH] the person owns or leases;

24 (B) where the person resides, temporarily or permanently;

25 or

26 (C) as a guest or express or implied agent of the owner,
27 lessor, or resident [AND THE PERSON IS NOT THE INITIAL
28 AGGRESSOR]; [OR]

29 (2) a peace officer acting within the scope and authority of the officer's
30 employment or a person assisting a peace officer under AS 11.81.380;

31 (3) in a building where the person works in the ordinary course of

1 the person's employment; or

2 (4) protecting a child or a member of the person's household.

3 * Sec. 4. AS 11.81.340 is amended to read:

4 Sec. 11.81.340. **Justification: Use of force in defense of a third person.** A
5 person is justified in using [MAY USE] force upon another when and to the extent
6 the person reasonably believes it is necessary to defend a third person when, under the
7 circumstances as the person claiming defense of another [THE DEFENSE OF
8 JUSTIFICATION] reasonably believes them to be, the third person would be justified
9 under AS 11.81.330 or 11.81.335 in using that degree of force for self-defense [SELF
10 DEFENSE].

11 * Sec. 5. AS 11.81.350(c) is amended to read:

12 (c) A person in possession or control of any premises, or a guest or an express
13 or implied agent of that person, may use

14 (1) nondeadly force upon another when and to the extent the person
15 reasonably believes it is necessary to terminate what the person reasonably believes to
16 be the commission or attempted commission by the other of criminal trespass in any
17 degree upon the premises;

18 (2) deadly force upon another when and to the extent the person
19 reasonably believes it is necessary to terminate what the person reasonably believes to
20 be a burglary in any degree occurring in an occupied dwelling or building.

21 * Sec. 6. AS 11.81.350 is amended by adding new subsections to read:

22 (e) A person

23 (1) in a vehicle, or forcibly removed from a vehicle, may use deadly
24 force upon another when and to the extent the person reasonably believes it is
25 necessary to terminate what the person reasonably believes to be a carjacking of that
26 vehicle;

27 (2) outside of a vehicle may use deadly force upon another when and
28 to the extent the person reasonably believes it is necessary to terminate what the
29 person reasonably believes to be the theft of that vehicle when another person, other
30 than the perceived offender, is inside of the vehicle.

31 (f) A person justified in using force under this section does not have a duty to

o a vehicle from

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leave or attempt to leave the area of the encounter before using force.

(g) In (e) of this section, "carjacking" means the robbery of a person in possession of a vehicle; "vehicle" means a "motor vehicle" as defined in AS 28.40.100, an aircraft, or a watercraft.

* Sec. 7. AS 11.81.350(d) is repealed.

Sec. 11.81.330. Justification: General Requirements for use of force in defense of self or others.

(a) A person may use nondeadly force upon another when and to the extent the person reasonably believes it is necessary for self defense against what the person reasonably believes to be the use of unlawful force, unless the person claiming self defense

- (1) used the force in mutual combat not authorized by law;
- (2) provoked the other's conduct with intent to cause physical injury to the other; or
- (3) was the initial aggressor.

(b) A person who is prohibited from using force in circumstances described in (a) of this section, is authorized to use force in self defense if that person has withdrawn from the encounter and effectively communicated the withdrawal to the other person, but the other person persists in continuing to use unlawful force.

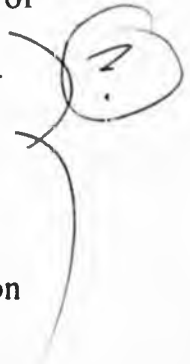
Sec. 11.81.335. Justification: Use of deadly force in defense of self or others.

(a) Except as provided in (b) of this section, a person who is authorized to use nondeadly force under AS 11.81.330 may also use deadly force when and to the extent the person reasonably believes deadly force is necessary for self defense against death, serious physical injury, kidnapping, sexual assault in the first degree, sexual assault in the second degree, sexual abuse of a minor in the first degree, or robbery in any degree, unless the deadly force was the result of the person using a deadly weapon or dangerous instrument

- (1) while acting alone or with others with intent to further a felony criminal objective of the person or one or more other persons;
- (2) while acting alone or with others with intent to establish or maintain control over a geographic area or neighborhood, or in response to perceived conduct by a rival or perceived rival, or a member or perceived member of a rival group, for control over the area, if the person using deadly force, or the group on whose behalf the person is acting, has a history or reputation for violence among civilians;
- (3) while a participant in a felony transaction or purported transaction or in immediate flight from a felony transaction or purported transaction in violation of AS 11.71; or
- (4) if the weapon used by the person was a firearm that was illegal under state or federal law for the person to possess.

(b) A person authorized to use deadly force under this section may do so unless the person knows that, with complete personal safety and with complete safety as to others being defended, the person can avoid the necessity of using deadly force by leaving the area of the encounter, except the person is not required to leave if the person is

- (1) on premises ^{a then} that the person owns or leases, or where the person resides, temporarily or permanently, or a guest or express or implied agent of the owner, lessor or resident;



(2) in a building where the person works in the ordinary course of the person's employment; or

(3) protecting the person's child or a member of the person's household;

or

(4) a peace officer acting within the scope and authority of the officer's employment or a person assisting a peace officer under AS 11.81.380.

Sec. 11.81.340. Justification: Use of force in defense of a third person.

A person may use force upon another when and to the extent the person reasonably believes it is necessary to defend a third person when, under the circumstances as the person claiming the defense of justification reasonably believes them to be, the third person would be justified under AS 11.81.330 or 11.81.335 in using that degree of force for self defense.

Sec. 11.81.350. Justification: Use of force in defense of property and premises.

(a) A person may use nondeadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the commission or attempted commission by the other of an unlawful taking or damage of property or services.

(b) A person may use deadly force upon another when and to the extent the person reasonably believes it necessary to terminate what the person reasonably believes to be the commission or attempted commission of arson upon a dwelling or occupied building.

(c) A person in possession or control of any premises, or a guest or an express or implied agent of that person, may use

(1) nondeadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the commission or attempted commission by the other of criminal trespass in any degree upon the premises;

(2) deadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be a burglary in any degree occurring in an occupied dwelling or building.

(d) A person

(1) in a motor vehicle, or forcibly removed from the vehicle, may use deadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be a carjacking of that motor vehicle;

(2) outside a motor vehicle may use deadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the theft of that motor vehicle when another person, other than the perceived offender, is inside the vehicle.

(e) A person authorized under this section to terminate a burglary, arson, carjacking or vehicle theft has no duty to retreat.

Motor vehicle

***Section 1: civil immunity provisions as currently set out in bills**

***Sec. 2.** AS 11.81.300 is amended to read:

Sec. 11.81.330. Justification: **General Requirements for use [USE] of [NONDEADLY] force in defense of self or others.**

(a) A person may use nondeadly force upon another when and to the extent the person reasonably believes it is necessary for self defense against what the person reasonably believes to be the use of unlawful force [BY THE OTHER], unless **the person claiming self defense**

(1) **used the force in [INVOLVED WAS THE PRODUCT OF] mutual combat not authorized by law;**

(2) **[THE PERSON CLAIMING THE DEFENSE OF JUSTIFICATION] provoked the other's conduct with intent to cause physical injury to the other; or**

(3) **[THE PERSON CLAIMING THE DEFENSE OF JUSTIFICATION] was the initial aggressor[; OR**

(4) **THE FORCE APPLIED WAS THE RESULT OF USING A DEADLY WEAPON THE PERSON CLAIMING THE DEFENSE OF JUSTIFICATION POSSESSED WHILE**

(A) **ACTING ALONE OR WITH OTHERS TO FURTHER A FELONY CRIMINAL OBJECTIVE OF THE PERSON OR ONE OR MORE OTHER PERSONS; OR**

(B) **A PARTICIPANT IN A FELONY TRANSACTION OR PURPORTED TRANSACTION OR IN IMMEDIATE FLIGHT FROM A FELONY TRANSACTION OR PURPORTED TRANSACTION IN VIOLATION OF AS 11.71].**

(b) **A person who is prohibited from using force in [IN] circumstances described in (a)[(1) - (a)(3)] of this section, is authorized to use force in self defense[THE PERSON CLAIMING THE DEFENSE OF JUSTIFICATION MAY USE NONDEADLY FORCE] if that person has withdrawn from the encounter and effectively communicated the withdrawal to the other person, but the other person persists in continuing to use [THE INCIDENT BY THE USE OF] unlawful force.**

***Sec. 3.** AS 11.81.335 is amended to read:

Sec. 11.81.335. Justification: Use of deadly force in defense of self or others.

(a) Except as provided in (b) of this section, a person **who is authorized to use nondeadly force under AS 11.81.330 may also [MAY] use deadly force [UPON ANOTHER PERSON] when and to the extent the person reasonably believes [THE USE OF] deadly force is necessary for self defense against death, serious physical injury, kidnapping, sexual assault in the first degree, sexual assault in the second degree, sexual abuse of a minor in the first degree, or robbery in any degree, unless the deadly force was the result of the person using a deadly weapon or dangerous instrument**

(1) while acting alone or with others, with intent to further a felony criminal objective of the person or one or more other persons;

(2) while acting alone or with others with intent to establish or maintain control over a geographic area or neighborhood, or in response to perceived conduct by a rival or perceived rival, or a member or perceived member of a rival group, for control over the area, if the person using deadly

force, or the group on whose behalf the person is acting, has a history or reputation for violence among civilians;

(3) while a participant in a felony transaction or purported transaction or in immediate flight from a felony transaction or purported transaction in violation of AS 11.71; or

(4) if the weapon used by the person was a firearm that was illegal under state or federal law for the person to possess.

(b) A person authorized to [MAY NOT] use deadly force under this section may do so unless [IF] the person knows that, with complete personal safety and with complete safety as to others being defended, the person can avoid the necessity of using deadly force by leaving the area of the encounter except there is not duty to leave [RETREATING, EXCEPT THERE IS NO DUTY TO RETREAT] if the person is

- (1) on premises that [WHICH] the person owns or leases, or where the person resides, temporarily or permanently, or a guest or express or implied agent of the owner, lessor or resident [AND THE PERSON IS NOT THE INITIAL AGGRESSOR];
- (2) in a building where the person works in the ordinary course of the person's employment;
- (3) protecting the person's child or a member of the person's household; or
- (4) [(2)] a peace officer acting within the scope and authority of the officer's employment or a person assisting a peace officer under AS 11.81.380.

*Sec. 4. AS 11.81.350 is amended to read:

Sec. 11.81.350. Justification: Use of force in defense of property and premises.

(a) A person may use nondeadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the commission or attempted commission by the other of an unlawful taking or damaging of property or services.

(b) A person may use deadly force upon another when and to the extent the person reasonably believes it necessary to terminate what the person reasonably believes to be the commission or attempted commission of arson upon a dwelling or occupied building.

(c) A person in possession or control of any premises, or a guest or an express or implied agent of that person, may use

(1) nondeadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the commission or attempted commission by the other of criminal trespass in any degree upon the premises;

(2) deadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be a burglary in any degree occurring in an occupied dwelling or building.

(d) A person

- (1) in a motor vehicle, or forcibly removed from the vehicle, may use deadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be a carjacking of that motor vehicle;

- (2) outside a motor vehicle may use deadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the theft of that motor vehicle when another person, other than the perceived offender, is inside the vehicle.[A PERSON MAY USE DEADLY FORCE UNDER CIRCUMSTANCES DESCRIBED IN (a) OR (c)(1) OF THIS SECTION ONLY WHEN AND TO THE EXTENT THE USE OF DEADLY FORCE IS JUSTIFIED UNDER OTHER SECTIONS OF THIS CHAPTER.] (This repeal is needed because if we don't require employees to retreat from their business premises, it means a shopkeeper could shoot shoplifters.)
- (e) A person authorized under this section to terminate a burglary, arson, carjacking or vehicle theft has no duty to retreat.

Alaska State Legislature

SENATOR
GENE THERRIAULT

Mailing Address:
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Senate

While in session
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797
Fax: (907) 465-3884
SENATE DISTRICT F

Sponsor Statement

Senate Bill 200 A Person's Right To Defend With Force

Senate Bill 200 has been introduced to allow individuals to more adequately protect themselves and others from violent crimes.

Based on a Florida Statute hailed as the "Castle Law", Senate Bill 200 would allow force, or deadly force, as a legally available option under certain circumstances where life, property, and the welfare of others is at high risk.

Existing statute currently allows a person to defend with force is specifically on property that a person owns or leases. Senate Bill 200 broadens that right to "stand your ground" any place a person has a right to be. Additionally, a provision extending the right to use force applies to children being threatened with death or serious injury, kidnapping, sexual assault, sexual abuse of a minor, or robbery in any degree.

Finally, the use of deadly force is permissible by a victim remaining inside an automobile being stolen, (car-jacked) or by a person outside a vehicle being stolen if there is a victim inside that vehicle.

A special provision is included to exclude the use of force for any reason against our law enforcement officers or those assisting them in their official duties.

SENATE BILL NO. 200

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY SENATOR THERRIAULT

Introduced: 5/10/05

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to defense of self, other persons, and property."

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** AS 09.65 is amended by adding a new section to read:

4 **Sec. 09.65.330. Immunity: use of defensive force.** (a) A person who uses
5 force in defense of self, other persons, or property as permitted in AS 11.81 is immune
6 from civil liability for the use of that force unless the person against whom force was
7 used was a peace officer who was engaged in the performance of official duties and
8 the officer identified the officer in accordance with any applicable law or the person
9 using force knew or reasonably should have known that the person was a peace
10 officer.

11 (b) The court shall award reasonable attorney fees, court costs, compensation
12 for loss of income, and all expenses incurred by the defendant in defense of any civil
13 action brought by a plaintiff if the court finds that the defendant is immune from
14 liability under (a) of this section.

15 * **Sec. 2.** AS 11.81.335 is amended to read:

1 **Sec. 11.81.335. Justification: Use of deadly force in defense of self.** (a)

2 Except as provided in (b) of this section, a person may use deadly force upon another
3 person when and to the extent

4 (1) the use of nondeadly force is justified under AS 11.81.330; and

5 (2) the person reasonably believes the use of deadly force is necessary
6 for self defense against death, serious physical injury, kidnapping, sexual assault,
7 sexual abuse of a minor [IN THE FIRST DEGREE, SEXUAL ASSAULT IN THE
8 SECOND DEGREE], or robbery in any degree.

9 (b) A person may not use deadly force under this section if the person knows
10 to a certainty that, with complete personal safety and with complete safety as to
11 others, the person can avoid the necessity of using deadly force by retreating, except
12 there is no duty to retreat if the person is

13 (1) any place where the person has a right to be [ON PREMISES
14 WHICH THE PERSON OWNS OR LEASES] and the person is not the initial
15 aggressor; or

16 (2) a peace officer acting within the scope and authority of the officer's
17 employment or a person assisting a peace officer under AS 11.81.380.

18 * **Sec. 3.** AS 11.81.340 is amended by adding a new subsection to read:

19 (b) Notwithstanding (a) of this section, a person may use deadly force upon
20 another when and to the extent the person reasonably believes a child is in imminent
21 threat of death, serious physical injury, kidnapping, sexual assault, sexual abuse of a
22 minor, or robbery in any degree.

23 * **Sec. 4.** AS 11.81.350 is amended by adding a new subsection to read:

24 (e) A person

25 (1) in a motor vehicle may use deadly force upon another when and to
26 the extent the person reasonably believes it is necessary to terminate what the person
27 reasonably believes to be a carjacking of that motor vehicle;

28 (2) outside of a motor vehicle may use deadly force upon another when
29 and to the extent the person reasonably believes it is necessary to terminate what the
30 person reasonably believes to be the theft of that motor vehicle when another person,
31 other than the perceived offender, is inside of the vehicle.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB200-DPS-AST-1-17-06
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affect: Public Safety
 Title An Act relating to defense of self, other persons, RDU Alaska State Troopers
and property. Component AST Detachments
 Sponsor Senator Therriault
 Requester Senate Judiciary Committee Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Passage of this legislation will have no fiscal impact as it would be absorbed by the current assets of the Department of Public Safety

Prepared by: Lieutenant James Helgoe Phone 907-269-4532
 Division: Alaska State Troopers Date/Time 1/17/06 11:27 AM
 Approved by: Commissioner William Tandeske Date 1/17/2006
 Agency: Department of Public Safety

Section Analysis SB 200

Section 1.

- SB 200 amends the Code of Civil Procedure, Title 9, by adding immunity from civil liability for use of force unless the person is a peace officer engaged in performing his or her official duties and he or she identified himself or herself as a peace officer.
- This section also provides for reasonable attorney fees, court, costs, compensation for loss of income, and all expenses incurred as a result of such a civil action.

Section 2.

- Under current law a person can use deadly force in a situation allowing non-deadly force if the person believes deadly force is needed to prevent death, serious injury, kidnapping and sexual assault.
- Section 2(a) adds sexual abuse of a minor as a reason to use deadly force
- SB bill expands "no retreat" to anyplace a person has a right to be, such as their car, business, or on a sidewalk coming home from a movie
- (Note: "No duty to retreat" already applies in Alaska in your home.)

Section 3:

Provides deadly force can be used, and "no retreat" is in effect, when necessary to protect a child from imminent threat of death, serious physical injury, kidnapping, sexual assault, or sexual abuse.

Section 4:

Provides a person, inside or outside a vehicle being carjacked, may use force to prevent the crime.

Major components of SB 200

- A. Establishes, in law, the presumption that a criminal who forcibly enters or intrudes into your home or occupied vehicle is there to cause death or great bodily harm, therefore a person may use any manner of force, including deadly force, against that person.

- B. Removes the "duty to retreat" if you are attacked in any place you have a right to be. You no longer have to turn your back on a criminal and try to run when attacked. Instead, you may stand your ground and fight back, meeting force with force, including deadly force, if you reasonably believe it is necessary to prevent death or great bodily harm to yourself or others.

- C. Provides that persons using force authorized by law shall not be prosecuted for using such force.

- D. Prohibits criminals and their families from suing victims for injuring or killing the criminals who have attacked them.

- E. Prohibits use of such force against a law enforcement officer at any time or under any conditions.

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Florida "Castle Doctrine" Protects the Innocent

Puts Judiciary on the side of crime victims

News media gets it completely wrong

On March 23, 2005, The Florida Senate passed SB-436, the "Castle Doctrine" unanimously, by a vote of 39 YEAS to zero NAYS. They know something about this bill.

On April 5, The Florida House passed SB-436, "Castle Doctrine" by a vote of 94 YEAS to 20 NAYS, a margin of better than four to one.

On April 26, Governor Jeb Bush SIGNED SB-436, the "Castle Doctrine" into law (Chapter No. 2005-27) It takes effect on October 1, 2005.

The news media nationwide started in immediately with its "Gunshine State," blood in the streets, Dirty Harry, vigilante, irrational mass murder nonsense, mythologies, lies and blatant unethical behavior.

A great deal of erroneous information has been written, published and spoken about Florida's new "Castle Doctrine" law.

Claims that the new law will turn Florida into the Wild West are not only an insult to intelligent people but give a patently false portrait of what the bill actually does.

The Florida "Castle Doctrine" law basically does three things:

One: It establishes, in law, the presumption that a criminal who forcibly enters or intrudes into your home or occupied vehicle is there to cause death or great bodily harm, therefore a person may use any manner of force, including deadly force, against that person.

Two: It removes the "duty to retreat" if you are attacked in any place you have a right to be. You no longer have to turn your back on a criminal and try to run when attacked. Instead, you may stand your ground and fight back, meeting force with force, including deadly force, if you reasonably believe it is

necessary to prevent death or great bodily harm to yourself or others. [This is an American right repeatedly recognized in Supreme Court gun cases.]

Three: It provides that persons using force authorized by law shall not be prosecuted for using such force.

It also prohibits criminals and their families from suing victims for injuring or killing the criminals who have attacked them.

In short, it gives rights back to law-abiding people and forces judges and prosecutors who are prone to coddling criminals to instead focus on protecting victims.

SO -- is this the impression you got from the news? Why not? Aren't media people impartial purveyors of objective facts, with no bias or spin, faithfully and accurately reporting the news? Everyone who believes that's an accurate description of the news media please raise your hand. See? No hands go up. Despite their protests otherwise, the news media has, in general, and especially with respect to gun issues, become an outrageous purveyor of agenda-driven nonsense on the dark side of the force.

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"Castle Doctrine" Self-Defense Law

Tuesday, April 26, 2005

Gov. Bush Signs Florida's New "Castle Doctrine" Self-Defense Law

Fairfax, VA – Today, in a ceremony at the state capitol, Gov. Jeb Bush signed Florida's "Castle Doctrine" (SB-436) into law. Sponsored by Senator Durell Peaden and Representative Dennis Baxley, the bill unanimously passed the Senate and overwhelmingly passed in the House, 94-20.

Prior to signing the National Rifle Association (NRA) supported bill, Gov. Jeb Bush stated, "It's a good, commonsense, anti-crime issue."

The "Castle Doctrine" simply says that if a criminal breaks into your home, your occupied vehicle, or your place of business, you may presume he is there to do bodily harm and you may use any force against him.

It also removes the "duty to retreat" if you are attacked in any place you have a right to be.

Furthermore, this law provides protection from criminal prosecution and civil litigation for those who defend themselves from criminal attack.

Past National Rifle Association (NRA) president and current Executive Director of Unified Sportsmen of Florida, Marion P. Hammer, stated, "Existing law is on the side of the criminal. The new law is on the side of the law-abiding victim."

She continued, "To suggest that you can't defend yourself against a rapist who's trying to drag you into an alley or against a carjacker who's trying to drag you out of your car is nonsense. The ability to protect yourself, your children, or your spouse is important, no matter where you are.

"I want to thank Governor Bush and the bill sponsors, Sen. Peaden and Rep. Baxley, for supporting this vital measure. This law is about affirming that your home is your castle and, in Florida, you have a right to be absolutely safe inside its walls," Hammer concluded.

--nra--

Established in 1871, the National Rifle Association is America's oldest civil rights and sportsmen's group. Four million members strong, NRA continues its mission to uphold Second Amendment rights and advocates enforcement of existing laws against violent offenders to reduce crime. The Association

remains the nation's leader in firearm education and training for law-abiding gun owners, law enforcement and the armed services.

Find this item at: <http://www.nraila.org/News/Read/Releases.aspx?ID=5685>

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Analysis: Fla.'s castle law is win for gun advocates

By Peter Roff
UPI Senior Political Analyst

Washington, DC, Apr. 26 (UPI) -- The 1968 murder of U.S. Sen. Robert F. Kennedy, D-N.Y., set in motion a series of events leading to the passage of landmark gun-control legislation. Over the next 30 years proponents of greater regulation on the sale and private ownership of guns gained considerable ground throughout the United States.



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In recent years, however, the pendulum has swung back the other way. Now, it is the supporters of gun rights -- rather than those who have as their ultimate objective the

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abolition of the right to own a firearm -- who are winning political victories.

The latest battle is in the state of Florida, where Republican Gov. Jeb Bush signed legislation Tuesday allowing citizens to "meet force with force" when attacked outside their homes.

Under the old law, something that is the case in many states, citizens under attack are considered to have a duty to retreat whenever possible. They put themselves in jeopardy if they defend against assaults by criminals through the use of potentially deadly force instead of running away if they have the chance. The new law, which passed unanimously in the Florida Senate and by a vote of 94 to 20 in the Florida House of Representatives, allows citizens the freedom to presume a criminal who breaks into their home, their car or their place of business intends to inflict bodily harm and makes it permissible to use force as a defense.

Pro-gun activists have nicknamed the new law the "Castle Doctrine," which also provides protection against criminal prosecution and civil litigation for those citizens who use force to defend themselves against criminals.

Marion P. Hammer, executive director of the Unified Sportsmen of Florida, described the new law as reversing the inequity that exists in the current code. "Existing law is on the side of the criminal. The new law is on the side of the law-abiding victim," said Hammer, a former president of the 4.5 million-member National Rifle Association.

The passage of the Castle Doctrine legislation is the latest in a string of successes for supporters of the Second Amendment going back to the mid-1990s when, through initiatives like the NRA's CrimeStrike, gun-rights advocates began to push for legislation and ballot measures that would turn the gun

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debate into a discussion of crime and criminals.

One of the earliest examples is in Virginia, where gun controllers scored a major success when they persuaded Democrat Gov. L. Douglas Wilder to support legislation banning the purchase of more than one gun per month in the commonwealth.

Considered a model for the nation, gun opponents intended to take the measure from state to state, the argument being that no reasonable person would seek to buy more than one gun per year -- let alone per month. That changed, however, during Virginia's 1993 gubernatorial race when the pro-gun-control candidate, Democrat Attorney General Mary Sue Terry, saw her almost 20-point lead in the polls evaporate after Republican George Allen decided to propose abolishing parole. Asked to choose between being tougher on guns or tougher on convicted criminals, Virginia voters chose the latter and elected Allen in a landslide.

Another seminal shift in the gun debate came as activists in states like California placed and passed measures on the ballot that would make a life sentence without parole mandatory after a third felony conviction. Again, the emphasis on criminals over the guns they might use helped refocus the discussion.

Other defeats for the gun-control lobby include its failure to close the so-called gun-show loophole and the failure of the GOP-controlled Congress to consider extending the Clinton-era ban on the sale on some so-called assault-style weapons, guns that made the banned list more because of the way they looked than because of their capacity vis-à-vis other firearms. The NRA's embrace of the so-called insta-check system, an instant background check performed on those who wish to purchase a firearm, also worked to its

advantage. The proponents of greater gun control had expected the gun-rights group to oppose the measure and were thrown for a loop when they endorsed it.

Another pending defeat is the almost certain passage, sometime in the next few years at most, of legislation protecting firearms manufacturers from product-liability suits arising out of the unlawful use of the guns they sell. Some gun-control advocates argue these lawsuits could bankrupt the U.S. gun industry, a helpful step in their effort to reduce the number of private firearms in the United States.

The new so-called Castle Law, like the NRA-backed effort in favor of so-called must issue concealed carry legislation, will likely be pushed from state to state now that it has been enacted in Florida. This raises the hackles of leaders in the gun-control movement like Sarah Brady, who told the Washington Post she was "in absolute shock" over the news the law had passed.

Castle Law opponents like Dan Gelber, a Democratic state representative from Miami Beach, maintain it is an invitation to a Wild West sort of public square and takes things in the wrong direction. "People ought to have to walk away if they can," he told the Post.

This is a tough sell, especially when balanced against the personal-safety argument made by Hammer and others who continue to maintain that crime and criminals are the problem rather than guns.

"To suggest that you can't defend yourself against a rapist who's trying to drag you into an alley or against a carjacker who's trying to drag you out of your car is nonsense," Hammer said. "The ability to protect yourself, your children or your spouse is important, no matter where you are."

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Florida's New "Stand Your Ground" Law: Why It's More Extreme than Other States' Self-Defense Measures, And How It Got that Way

By ANTHONY J. SEBOK
anthony.sebok@brooklaw.edu

Monday, May. 02, 2005

Last week, Governor Jeb Bush signed a bill that has become known as the "Stand Your Ground" law. The law immunizes citizens who use deadly force in self-defense against criminal prosecution and civil liability.

Critics of the law are afraid it will promote vigilantism. Supporters say that it merely brings Florida into line with the majority of other states. But the truth is the law goes beyond what other states are doing.

In this column, I'll discuss the new law, and argue that it is an example of a simple reform that was hijacked by the NRA.

What Florida Self-Defense Law Previously Was Like

Until last week, the law in Florida concerning self-defense could be divided into two parts: First, there were the rules that governed when deadly force could be used if one was attacked in one's own home. Second, there were the rules that governed when deadly force could be used if one were attacked outside of one's own home.

To explain the prior Florida rules, I will use the example of Lisa, who is attacked by Bob.

First, imagine Lisa is attacked by Bob in her own home. She could use deadly force if she were reasonably afraid that Bob was going to inflict

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a serious injury on her. Moreover, even if Bob was a burglar interested only in her property and she had the option of running outside of her house to safety, she could use deadly force if she were reasonably afraid that Bob was going to inflict a serious injury on her if she did not run away. Put simply, she is allowed to "stand her ground."

This is known as the "castle doctrine" -- based on the maxim that "One's home is one's castle" -- and it governs the rules of self-defense for criminal and tort law in almost every state.

Second, imagine, instead, that Lisa is attacked by Bob on the street in Florida. In this instance, she cannot use deadly force if she can retreat safely from Bob. (For instance, suppose a drunken, knife-wielding Bob confronts Lisa in front of a bar featuring armed bouncers, into which Lisa can safely escape.) So even if Lisa knows Bob will kill her if she "stands her ground," she cannot kill him while still being able to retreat.

Florida's retreat doctrine reflected a certain attitude among courts which might seem quaint today, but is easy to understand. Florida courts took the position that life was so precious -- even the lives of people like Bob -- that victims of violent attacks should not kill unless it became absolutely necessary.

The bottom line, then, was that victims had to take advantage of a "safe" retreat except when attacked in their own homes. But what if the victim doesn't retreat? What consequences follow? Could she be prosecuted, sued, or both?

In almost every state except Florida, Lisa could not be criminally prosecuted. In a majority of states, she also cannot be sued in tort.

But some states would allow Lisa to be sued. And the Restatement (Second) of Torts -- a classic statement of tort law principles -- agrees: Its Section 65 would still allow Bob to sue Lisa for personal injuries if she responded to his upturned knife with a gunshot when she could have retreated safely.

How the New "Stand Your Ground" Law Changed the "Castle" Doctrine

Florida's new "Stand Your Ground" law changes Florida's self-defense rules in several ways.

First, it is now very easy to invoke the "castle" doctrine in Florida.

Under the old law, a person who killed someone in their home had the burden of proof to show that they were in fear for their safety. Now, all a person has to do is establish that the person they killed was "unlawfully" and "forcibly" entering their home when they shot the victim.

That is because the new law creates a presumption that anyone who forcibly and illegally enters a home is intent on threatening the lives of the people within. And, at least according to a report written for the Judiciary Committee of the Florida Senate, that presumption is

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conclusive; it cannot be rebutted with contrary evidence.

So let's go back to Lisa and Bob. Under the old law, Lisa would have had to prove not only that Bob was in her home, but also that she was afraid for her life (or the lives of others in the house). In reality, that was often easy to do -- usually juries would take the word of a living homeowner over a dead burglar (even if the burglar was unarmed). But now Lisa, in theory, has a free hand to shoot even a plainly unarmed burglar as to whom he or she, in fact, felt no fear at all.

Second, the new Florida law expands the definition of "castle" to include vehicles -- such as cars and boats. This expansion the castle doctrine was clearly intended to address carjacking.

Third, in Florida, Lisa can now "stand her ground" even if she is outside of her home. But to do so, she must "reasonably believe" that using deadly force is necessary to prevent "imminent" use of deadly force against herself or others.

Thus, Florida is now joining the large number of states who do not value "life" above the right to stand unmolested wherever one wants. It's unlikely, however, that this change will change outcomes in particular cases.

Previously, all Lisa had to do to win her case was argue that she honestly and reasonably believed that she could not retreat safely. Now, she has to argue, instead -- somewhat similarly -- that she reasonably believed that if she didn't use deadly force, Bob imminently would.

Under either standard, Lisa still has the burden of proof to justify her killing. Also, under either standard, the jury may disbelieve her if there are witnesses around to contradict her story.

It's Not True that the New Law Merely Aligns Florida with Other States

According to Rep. Dennis Baxley, R-Ocala, the new law brings Florida into line with other states. "We're not breaking ground here. We're catching up," Baxley said.

That is probably more or less true when it comes to the legal standard governing use of deadly force outside the house. But it is very inaccurate when it comes to the legal standard governing killings inside of homes -- and, especially, in vehicles, which now count as a kind of "castle" under the "castle doctrine." Here, the new law has truly radical effects.

Why? Because the new law bulks up the old "castle" doctrine -- once a reasonable rule of law -- until it is a legal monstrosity: a legal Incredible Hulk.

Recall that now, at least according to the Senate Report, there is an irrebuttable presumption that anyone who forcibly and illegally enters a home -- or, under the new law, a car -- is intent on threatening the lives of the people within. That means that even in the face of overwhelming evidence that Bob had no intent to physically harm

Lisa, his estate will not be able to sue her.

It may, in fact, be the reality, that in almost all cases in which a citizen kills an unlawful intruder, or carjacker, it is because the unlawful intruder, or carjacker, was capable of killing, and willing to kill, the citizen first. (I suppose the "gentleman thief" no longer exists in Florida.) But there is at least a chance of serious miscarriages of justice.

Suppose that a doctor's drug addict brother breaks into his mansion to raid the medicine cabinet. Now, the doctor can kill his brother to ensure that he will be the sole heir to their wealthy parents' estate.

Or suppose a teacher upon entering his SUV, finds a student who has broken in so that he can deface the interior. Though the intent was clearly vandalism, and the boy has no record of violence, the irate teacher guns down the student. According to Florida, this would appear to be legal.

What can proponents say when examples like these are raised? It's hard to imagine. Perhaps they would claim that those who break the law by violating another's "castle" deserve what they get -- even if what they get is death.

The "Stand Your Ground" Law Says Property Is More Important than Life

In this respect, Florida has taken a wrong turn that no other state should emulate.

In effect, its law allows citizens to kill other citizens in defense of property.

The principle holding that life is more valuable than the defense of property is deeply embedded in our legal history. The Florida law contravenes this simple principle. (That is does so by hiding behind a legislative "presumption" that all burglars or car thieves are potential killers should not obscure that fact.)

The old version of the castle doctrine told homeowners that they could kill when they reasonably believed that their lives were in danger. Now the law tells average citizens they can kill when they reasonably believe that their homes or vehicles have been illegally and forcibly invaded.

That adds an additional wrinkle -- and an additional way innocents can be killed. Anyone can make a mistake in the heat of the moment, but the margin for error in the new law is unbearably large.

What if Bob is a panhandler who approaches Sue's car and touches it against her wishes? Perhaps it would be obvious to most observers that he had no intention of entering the car, but what if Sue panics and thinks he is a carjacker?

It is of no help to say that the law was not designed to permit her to use deadly force under those circumstances: after Bob is dead and Sue is facing criminal and civil penalties, the damage has already

been done.

The only test of laws is their effect in the real world. The castle doctrine, until it was changed by Florida, was a practical compromise between a number of competing interests in life. It was a balance between the state's interest in allowing citizens to protect their own lives, and its interest in minimizing violence in the streets -- ranging from vigilantism to a too-quick trigger finger.

The new "Stand Your Ground" law is likely to produce a number of ugly real-world side effects. Its real purpose seems to be the capital punishment of property-criminals, regardless of whether their deaths help protect the lives of anyone else.

Furthermore, Florida's castle doctrine has now been expanded so that the test for self-defense covers far more circumstances and locations than before.

All in all, the room for error is much larger. In addition, the law sends a very confusing message to the citizens of Florida about when they can use lethal force with impunity.

If my prediction that this law will insulate certain home- or car-owners who kill without good reason to do so turns out to be correct, I hope the Florida legislature will have the courage to revisit this law and fix it. In the meantime, the NRA, flush with their victory in Florida, is lobbying to have the "Stand Your Ground" law adopted in other states, such as New York. Other states should reject the NRA's "help" when it comes to revising their self-defense laws.

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Police: Tourists stabbed in park near White House

WASHINGTON (AP) — Three people were stabbed Tuesday in Lafayette Park, across from the White House, the Secret Service said.

Eric Zahren, a spokesman for the agency, said one person was detained, but said he could provide no further information. Zahren said investigators did not immediately know what prompted the attack, which he said happened in the northeast corner of the park. That section of the park remained roped off for authorities at midday.

"Another person might have had their shirt slashed," said Sgt. Scott Fear, a spokesman for the U.S. Park Police, which was also investigating.

Fear told WUSA-TV that three victims were sent to a local hospital and were being treated for non-life-threatening injuries. He said the area of the attack was closed, but the rest of the park was open and a crowd of people was gathered there having lunch. **(Related video: Lafayette Park stabbings)**

He later said the three victims apparently were tourists and all were adults.

There was no indication that the acts of violence were related in any way to the White House. The park, which faces the North Portico of the Executive Mansion along Pennsylvania Avenue, historically has been a staging area for protests and demonstrations.

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For Immediate Release: November 3, 2004

How the 'Make My Day' law cut epidemic of violent burglary

By Charles Laurence

Sunday London Telegraph

At 3.30am on January 6, 1987, Dr Frank Sommer, a dentist in Tulsa, Oklahoma, woke to the sound of his garage door opening. He looked at the clock, mentally scolded his son, then 18, or his daughter 20, for getting home so late, and waited for the sound of their footsteps downstairs.

"After a few minutes, I thought that it was odd that I had heard nothing more. I took the gun from my nightstand, left my wife fast asleep and went downstairs to make sure everything was OK," he recalled yesterday.

What happened next was an experience of pure terror. As he looked through the peep-hole from the kitchen into the garage, he saw two strange men. One was pilfering from his wife's car: the other was standing at the opened door, by the tool racks.

Just as he stepped through the door to challenge the intruders, the lights went out. "It was total darkness and suddenly I was very, very scared. I fired one shot and yelled a warning. I saw one of them run off and as I went towards the driveway I saw a body in the doorway. 'Oh no!' I thought. 'He's dead.' "

In those few seconds Dr Sommer, 66, had been plunged into a case that

changed the law in Oklahoma and may yet influence a change in the law in Britain. Within weeks of the incident, the Oklahoma state government passed legislation that became known as the Make My Day Law, named for the celebrated scene in the Clint Eastwood Dirty Harry film.

The law was pushed through by Sen Charles Ford, a Republican, the opposition party in the state.

"The purpose of the law is to protect the victim of crime who defends his home and his family against unlawful intrusion from any criminal prosecution or civil action," Sen Ford said last week.

"We considered it outrageous that someone who protects his home and family should suffer. Our law says you can use any force, including deadly force, to defend your home."

It has been an unqualified success. Since the Make My Day Law came into force, burglary has declined by almost half in Oklahoma. In 1987, there were 58,333 cases; in 2000, just 31,661.

While crime rates throughout America fell in the 1990s, Make My Day supporters point to a second statistic in Oklahoma they say proves the impact of the new law: while burglary rates plunged, other forms of theft stayed constant. In 1988, there were 96,418 cases, in 2000, 96,111.

Similar anti-burglar laws have now been adopted in Colorado and Arizona. The reason, said Sen Ford, was simple: "The law works. We were in the grip of a violent burglary epidemic when Dr Sommer's home was invaded.

"Over that Christmas, we had six people in their 70s and 80s killed, bludgeoned

to death by burglars in their bedrooms. How were they meant to defend themselves if they could not legally resort to lethal force?" he said.

Giving householders immunity from criminal and civil action was also inspired by Dr Sommer's experience. Although he was taken to the police station and interrogated, the District Attorney read the public mood over the series of deadly burglaries and decided against charging him with the killing of the burglar, Russell Bryant, 19.

An "ambulance chaser" lawyer contacted Bryant's family and sought damages for a lifetime of lost earnings on the grounds that the killing was unlawful.

"This was outrageous and focused attention on the vague state of the law which left the victim of burglary vulnerable," said Sen Ford, 73.

Prior to the Make My Day legislation, the law, as it remains in most American states, sanctioned force in self-defence and the defence of property, but only on the basis of "reasonable" response to the violence offered by the criminal. This allows a baseball bat against a baseball bat, a knife against a knife, and a gun against a gun - although in theory the householder should allow the burglar to shoot first.

There have now been at least 11 cases where intruders have been shot dead in Oklahoma and the householders who pulled the trigger have escaped any sanction under the Make My Day law.

While Dr Sommer is a fervent supporter of the law protecting householders, he said that killing Bryant had left him into overwhelming feelings of guilt and that for years he was tormented by the thought that he had committed the "ultimate sin".

"Every time I go into that garage I think about it," he explained. "But I do not regret it. My wife and children were in our home. I am sorry that young man was in the wrong place at the wrong time. But that was of his choosing."

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