



Testimony of David LaBahn

Before the Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights

Hearing on “‘Stand Your Ground’ Laws: Civil Rights and Public Safety Implications of the Expanded Use of Deadly Force”

October 29, 2013

Chairman Durbin, members of the Subcommittee, thank you for the opportunity to testify before you today. My name is David LaBahn and I am the President and CEO of the Association of Prosecuting Attorneys (APA), a private non-profit whose mission is to support and enhance the effectiveness of prosecutors in their efforts to create safer communities. APA is the only national organization to include and support all prosecutors, including both appointed and elected prosecutors, as well as their deputies and assistants, whether they work as city attorneys, city prosecutors, district attorneys, state’s attorneys, attorneys general or U.S. Attorneys.

On behalf of APA, I am pleased to have the opportunity to address the issues surrounding the vast expansion of self-defense referred to as Stand Your Ground laws. As prosecutors, we seek to do justice for victims and hold offenders accountable for their actions, especially in cases where a life has been violently ended whether by firearm or other deadly weapon. Since 2009, APA has tracked the legislative progression of Stand Your Ground and assisted prosecutors and other law enforcement professionals who have been working to navigate these expansive new laws. I have attached to my testimony the APA’s Statement of Principles regarding Stand Your Ground laws, which are commonly understood as laws that expand the so-called “Castle Doctrine.” As our Statement of Principles makes clear, Stand Your Ground laws have raised a number of troubling concerns.

Prosecutors and their professional associations have overwhelmingly opposed Stand Your Ground laws when the measures were in their respective legislatures. The concerns expressed include the limitation or even elimination of prosecutors’ ability to hold violent criminals accountable for their acts. However, even with this opposition, many states have passed Stand Your Ground legislation into law. Many of these laws include provisions that diminish or eliminate the common law “duty to retreat”¹ outside of the home, change the burden of proving reasonableness to a presumption, and provide blanket civil and criminal immunity.

¹ It should be noted that at common law the “duty to retreat” is limited to situations where the retreat can be done safely and not place the victim in a more dangerous situation.



These provisions run counter to the role of prosecutors as upholders of justice and the integrity of our criminal justice system. By expanding the realm in which violent acts can be committed with the justification of self-defense, Stand Your Ground laws have negatively affected public health and undermined prosecutorial and law enforcement efforts to keep communities safe. The presumptions and immunity provisions have undermined standard police procedures, preventing law enforcement from arresting and detaining criminals, and have stymied prosecutors, deterring them from prosecuting people who claim self-defense even while killing someone in the course of committing other unlawful activity. In some states, courts have interpreted the law to create an unprecedented procedural hurdle in the form of immunity hearings, which single out self-defense cases and effectively transfer the role of the jury over to judge. Moreover, because these laws are unclear, there has been inconsistent application throughout the states and even within respective states. Prosecutors, judges, police officers, and ordinary citizens have been left to guess what behavior is legal and what is criminal. Even with the best efforts to implement these broad measures, defendants, victims' families and friends, investigators, prosecutors, defense attorneys, trial courts and appellate courts have been forced into a case-by-case analysis with no legal certainty as to what they can expect once a life has been taken.

As a result, Stand Your Ground laws provide safe harbors for criminals and prevent prosecutors from bringing cases against those who claim self-defense after unnecessarily killing or injuring others. For example, in a February 2008 Florida case, a 29-year-old drug dealer named Tavarious China Smith killed two men in two separate incidents, the first drug-related, and the second over retaliation for the first. Though he was engaged in unlawful activity in both instances – selling drugs during the first shooting and using an illegal gun in the second – prosecutors had to conclude that both homicides were justified under the Florida's Stand Your Ground law. Unfortunately, this example is not an anomaly. A recent study concluded that a majority of defendants shielded by Stand Your Ground laws had arrest records prior to the homicide at issue.

The origin of Stand Your Ground legislative proposals appears to be Florida in 2005. It is our position that common law sufficiently protected people's rights to defend themselves, their homes, and others. The proper use of prosecutorial discretion ensured that lawful acts of self-defense were not prosecuted, and I have not seen evidence to the contrary. After reviewing the legislative history of the Florida provision, the case used to justify the need for this broad measure involved no arrest or prosecution. The law enforcement community responded properly to the shooting and completed a thorough investigation, and the homeowner was never charged by the prosecutor in the lawful exercise of self-defense.



Because the provisions of Stand Your Ground measures vary from state to state, I will attempt to summarize some of the main provisions which have caused prosecutors difficulty in uniformly enforcing the law and have ultimately led to disparate results in cases where a victim was killed yet no one was held accountable for the murder.

First, the meaning of “unlawful activity” needs to be clarified. Many states have extended Stand Your Ground protection to people who are in a place where they have a right to be and who are not engaged in an unlawful activity. Therefore, what is lawful and what is unlawful? Can a drug dealer defend his open air drug market? If the individual is a felon, does he have a right to kill another with a firearm and claim the Stand Your Ground defense?

Second, immunity is rarely granted in criminal law, with the few exceptions existing in order to encourage cooperation with law enforcement and the judicial system. The legislatures should remove the immunity provisions and clarify that self-defense is an affirmative defense, meaning that once the defendant provides some evidence that he or she was acting in self-defense, the onus is on the prosecution to prove that he or she was not acting in self-defense. This would bring this new defense within the well-recognized and used self-defense procedure.

Third, the elimination of the Stand Your Ground laws’ presumptions will eliminate many dangerous effects. The legislatures should amend the law to replace the presumptions with inferences. This will remove one of the greatest obstacles to law enforcement and prosecutors in pursuing justice while adequately protecting the right to self-defense.

Fourth, the statutes should be amended to prevent an initial aggressor from claiming self-defense. Some laws contain a loophole that enables a person to attack another with deadly force and later use Stand Your Ground to justify killing the person he or she attacked if that person responds with like force and the initial aggressor cannot escape. At a minimum, the initial aggressor should be required to withdraw before being allowed to claim self-defense.

Finally, we recommend that the law be limited so that Stand Your Ground cannot be raised when the person on whom force is used is a law enforcement officer, regardless of whether the person using force knew that such person was in law enforcement. Statutes should be amended to read that Stand Your Ground should not be applicable against a law enforcement officer when that law enforcement officer is acting within the course and scope of his/her duties.

Taken together, I believe these reforms to the various Stand Your Ground laws will help minimize their detrimental effects and restore the ability of investigators and prosecutors to fully enforce the law and promote public safety, while continuing to respect the rights of law-abiding citizens to protect themselves and their families. Thank you for holding this hearing to inform the Congress and interested parties about the effects of these laws.



Statement of Principles

As a national association dedicated to supporting and enhancing the effectiveness of prosecutors in their efforts to create safer communities, the Association of Prosecuting Attorneys (APA) creates this statement of principles regarding expansions to the Castle Doctrine to assist prosecutors in their effort to ensure justice and uphold public safety.

"Castle Doctrine" refers to the Common Law principle that a person has the right to defend against invasion and attack in their own home. In recent years, many jurisdictions have expanded this doctrine.

Castle Doctrine legislation has been expanded to apply to other areas outside the home, has diminished or eliminated the "duty to retreat" and other notable modifications including changing the burden of proving reasonableness to a presumption and providing blanket civil and criminal immunity.

Prosecutors, as upholders of justice and the integrity within our criminal justice system, retain a special role within the community through which confidence in our criminal justice system and public safety are maintained.

The expansion of the Castle Doctrine may have unintended consequences and inhibits the ability of law enforcement and prosecutors to fully hold violent criminals accountable for their acts.

The following statement of principles manifests the commitment of federal, state, local and tribal prosecutors to holding criminals accountable while protecting the rights of self-defense and defense of property.

- The right of self-defense and the right to defend one's home against invasion are well established in Common Law. The proper use of prosecutorial discretion ensures that justified acts of homicide are not prosecuted. For these reasons, expansions of the Castle Doctrine are unnecessary.
- Replacing the burden of proving reasonableness with a presumption of reasonableness eliminates the use of prosecutorial discretion. As upholders of justice and enforcers of the law, this is a key function of prosecutors that should not be taken away or diminished.
- Expanding the Castle Doctrine to public areas outside the home places heavier burdens on law enforcement when responding to such calls or incidents.
- Expansions to the Castle Doctrine negatively affect public health and the community's sense of safety by undermining prosecutorial and law enforcement efforts to keep communities safe as a result of expanding the realm in which violent acts can be committed with the justification of self-defense or defense of property.

- Any expansion to the Castle Doctrine must be based in research. Prosecutors and law enforcement agencies need to work with legislatures in collecting and analyzing data and evidence to support any legislative changes made to the Castle Doctrine.
- Use of the Castle Doctrine as a criminal and civil defense should be closely studied to ensure that expansions to the legislation are not being abused, and gaps within the legislative scheme are closed.