ACLU Kansas

Hot Topics Series

Stand Your Ground

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Stand Your Ground

Stand Your Ground laws came under intense national scrutiny in the wake of the 2012 murder of Trayvon Martin by George Zimmerman. A neighborhood vigilante, Zimmerman was acquitted in his murder trial after claiming he shot the unarmed teenager in self-defense.

Although the tragedy of Trayvon's murder occurred in Florida, states across the county—including Kansas—have similar laws on the books regarding the right to defend yourself with deadly force if you believe you are at great risk of bodily harm. The application of these laws has been called into question across the board, especially where—as in Kansas—the law shields law enforcement officers from accountability when they use deadly force against people in custody.

More recently—and more locally— Sedgwick District Attorney Marc Bennett cited Stand Your Ground laws in his announcement that he would not seek charges against county employees in the death of C.J. Lofton, even after it was medically ruled a homicide. Lofton was a Wichita teenager who had been handcuffed—bringing about more questions about the wisdom and application of Stand Your Ground laws.

What are "Stand Your Ground" laws?

Stand Your Ground laws—sometimes called "Shoot First" laws—radically expand legal protections for people who use violence or deadly force and claim they did so in self-defense.

These laws nullify the longstanding legal principle called "duty to retreat," which dictates that when faced with the threat of violence, an individual must try to deescalate or leave when viable, only permitting deadly force when necessary to prevent imminent harm.

Stand Your Ground laws are an extension of another legal principle called the "castle doctrine," which alleviated the duty to retreat solely in cases of home invasions.[1] Castle doctrine widely authorized the use of "reasonable force, including deadly force" for those who were faced with the threat of violence inside their home or car.[2] Stand Your Ground extends the theory behind the castle doctrine—that you should not have to retreat inside your own home—and apply it to all situations in which a person is faced with the threat of violence, regardless of whether leaving the situation or deescalating is safe and reasonable.

Stand Your Ground laws purport to give legal protection to those who must use deadly force in self-defense, but the right to use proportionate force—including deadly force when necessary—in defending oneself already existed prior to these laws.

Per the Giffords Law Center, "[b]y definition, Stand Your Ground laws only change the legal standard for situations where it can be proven that someone **knew they could safely step away** from an incident to avoid any serious threat to themselves or others, **but chose to kill** another human being anyway. […] As such, these laws too often allow individuals to use lethal force as a first step, rather than as a last resort."[3]

The first Stand Your Ground law was passed in Florida in 2005 after a "deliberate push" from the National Rifle Associate (NRA) and the American Legislative Exchange Council (ALEC), a conservative organization. There are now 30 states with Stand Your Ground laws in effect, including Kansas.

Stand Your Ground Laws in Kansas

In Kansas, an individual is justified in the use of force against another when they reasonably believe that such force is necessary to defend against such other's imminent use of unlawful or deadly force.[4] Whether the use of force was justified is not initially a jury question, but rather the subject of a pre-trial hearing that employs a "probable cause" standard – the burden of proving probable cause is shifted to the prosecution.[5]

To determine probable cause and whether the use of force was reasonable, Kansas courts use a "two-pronged test": a subjective test requiring a showing that the defendant believed the use of force was necessary and an objective test requiring proof that a reasonable person in the defendant's circumstances would have found the force to be necessary.[6] Because Kansas law explicitly has no duty to retreat, most uses of force are found to be reasonable.[7]

In Kansas, as in Florida and a handful of other states, there is a presumption that a defendant who invokes the Stand Your Ground defense had reasonable belief that their use of force was necessary.[8] There is also a presumption that deadly force is necessary if the person against whom the force is used is thought to be unlawfully entering a dwelling or is attempting to remove another person from that dwelling.[9] However, this presumption has several problematic implications–for one, racial bias may inform one's perception of who is lawfully in a particular place.[10]

Kansas's Law Grants People Immunity from Prosecution and Civil Liability

One of the most problematic features of current Stand Your Ground is the inclusion of immunity clauses that effectively shield those who invoke the law from criminal and civil prosecution. Since 2005, at least 23 states have added immunity clauses to their self-defense laws, and Kansas adopted an immunity clause in 2010.[11] Because our state provides them this immunity, people who use deadly force in Kansas are protected from even standing trial.[12] If a person claims the Stand Your Ground defense, the person receives a pretrial immunity hearing. At that hearing, the judge determines if the person acted reasonably; if they did, then the case is dismissed and the person who used deadly force is immune from any additional civil or criminal actions.[13] Kansas is one of only six states that provides absolute immunity from suit – other states' immunity clauses only shield people who use deadly force from civil litigation. This absolute immunity also has the unfortunate consequence of depriving those who may have been harmed due to use of force of any kind of remedy, even if they were not directly involved in the use of force.[14]

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[1] Lily Rothman, "The Surprising History Behind America's Stand Your Ground Laws" https://time.com/4664242/caroline-light-stand-your-ground-qa/
[2] National Conference of State Legislatures, "Self Defense and 'Stand Your Ground'" https://www.ncsl.org/research/civil-and-criminal-justice/self-defense-and-stand-your-ground.aspx#:~:text=The%20common%20law%20principle%20of,an%20intruder%20in%20their%20home.&text=Laws%20in%20at%20least%2025,which%20one%20is%20lawfully%20present.
[3] https://giffords.org/lawcenter/gun-laws/policy-areas/guns-in-public/stand-your-ground-laws/ [4] K.S.A. § 21-3211. [5] K.S.A. § 21-3219. See also State v. Ultreras, 296 Kan. 828, 845 (2013). Ultreras interprets 21-3219 as shifting the burden to the prosecution, and that the standard should be probable cause. In interpreting the Kansas statute, the court looks the Florida appellate court decisions for guidance because the Kansas law is in large part modeled after the Florida one. [6] Andrew Bahl, "Kansas has some of the strictest offender registration requirements in the country. Could that change?" TOPEKA CAPITAL-JOURNAL (Nov. 21, 2021), https://www.cjonline.com/story/news/accident/2021/11/21/advocates-push-loosen-kansas-criminal-offender-registration-requirements-public-safety/8626064002. [7] State v. McCullough, 293 Kan. 970, 975 (2012). [8] Tamara R. Lave, "Shoot to Kill: A Critical Look at Stand Your Ground Laws," 67 U. Miami L. Rev. 827, 834 ("Now, with limited exception, the law creates a presumption that a person possessed a reasonable fear of "imminent peril of death or great bodily harm" to himself or another when employing force that is either "intended or likely" to cause "death or great bodily harm" to another…"). [9] K.S.A. § 21-5224(a). [10] Some are skeptical of implicit bias's role in the disparities in Stand Your Ground law application because of the language in K.S.A. 21-5224 saying that there must be reasonable belief that the person claiming the defense will be subject to "imminent death or great bodily harm." However, the law also permits use of deadly force against those believed to be trespassing, or those thought to be in the commission of a felony or misdemeanor (like larceny). Because white people are more likely to be punitive and believe that people of color are committing crimes, they are thus more likely to have a subjectively "reasonable" belief that deadly force is "justified" to stop commission of said crimes. See, e.g. The Sentencing Project, "Race and Punishment: Racial Perceptions of Crime and Support for Punitive Policies," (Sep. 03, 2014), available at https://www.sentencingproject.org/publications/race-and-punishment-racial-perceptions-of-crime-and-support-for-punitive-policies/#Executive%20Summary

Law Enforcement Officers Can Claim the Stand Your Ground Defense and Avoid Liability for Killing People in Custody

One of the most troubling features of the Stand Your Ground laws in Kansas is they apply with equal force to law enforcement officers who use force against people in the police custody.

This means that law enforcement will routinely avoid criminal prosecution or civil liability for using deadly force against people if there is any argument made that the person in custody was "resisting" or "threatening" the officer.

This barrier to accountability was on clear display when Sedgwick County District Attorney Marc Bennet declined to press charges against officials at the Juvenile Intake and Assessment Center (JAIC) in Wichita, after they restrained C.J. Lofton, a Black teenager in the midst of a mental health crisis, until he lost consciousness. C.J. died several days later at an area hospital, and his death was ruled a homicide by the coroner. Yet, D.A. Bennet refused to press charges, claiming that Kansas' Stand Your Ground law prevented prosecution because C.J. had been resisting, thereby causing the JIAC workers to need to use self-defense.[15]

As noted by D.A. Bennet in his memo addressing C.J.'s case, there have been 15 homicides by law enforcement officers in Sedgwick County where the officers were not charged because Kansas's Stand Your Ground laws make officers immune from prosecution.

Allowing police officers to claim immunity from suit based on Stand Your Ground laws is inherently problematic, as it encourages police to use deadly force as a first—rather than last—resort.

Under the Fourth Amendment of the U.S. Constitution, police can only use deadly force when there is an objectively reasonable belief that they or someone else is in imminent danger.

Kansas laws seemingly lessen this standard, effectively allowing law enforcement to use deadly force—and as in the case with C.J. Lofton, use continual force and restraints that result in death—with impunity.

Stand Your Ground Laws Encourage Violence

Since the first Stand Your Ground laws took effect in 2005, they have been shown to increase violence. A study compared states before and after they enacted Stand Your Ground laws; those who adopted these laws had justifiable firearm homicide rates grow over 250% more than those who did not.[16]

In Florida, the first state to adapt these laws, studies have associated the laws with a 32% increase in firearm homicides and a 24% increase in overall homicides.[17] Per a NYT article, "in 79% of Florida's Stand Your Ground cases, the assailant could have retreated to avoid the confrontation, and in 68% of cases, the person killed was unarmed."[18] Nationwide, it has been found that approximately 30 to 50 people are killed each month as a result of Stand Your Ground Laws.[19]

Although these laws are claimed to be for safety, these analyses show that Stand Your Ground laws actually increases violence and homicide rates. From a public health perspective, these laws create significant harm.

[11] K.S.A. 21-5220 et. seq.; Nat'l Conference of State Legislatures, "Self Defense and 'Stand Your Ground,'" (May 26, 2020), available at https://www.ncsl.org/research/civil-and-criminal-justice/self-defense-and-stand-your-ground.aspx ("Self-defense laws in at least 23 states (Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Montana, New Hampshire, North Carolina, North Dakota, Oklahoma, Ohio, Pennsylvania, South Carolina, Tennessee West Virginia and Wisconsin) provide civil immunity under certain self- defense circumstances.")
[12] K.S.A. § 21-5231(a) [13] See, e.g. State v. Wiseman, 412 P.3d 1039 (Kan. Ct. App. 2018) ("Invoking immunity from prosecution under K.S.A. 2015 Supp. 21-5231 involves both a subjective and an objective element: (1) The person must have sincerely believed that using deadly force was necessary to defend himself or herself; and (2) a reasonable person in the same circumstances would have perceived that deadly force was necessary.").

The Law Is Ready for Reform

Lawmakers in Kansas realize it is past time to reform Stand Your Ground laws in Kansas, as the original intent of the law was not to shield law enforcement from liability for officer-caused deaths in custody.[20]

Although we do not believe the carceral system offers true justice, even to victims of police brutality, reforms to current laws are still necessary. Current laws are poorly built for holding people accountable for taking a human life. They flip the burden of proof, entrench police brutality when applied to law enforcement and other officials, and show an overarching effect of creating violence.

Here are ways we can vastly improve Kansas' Stand Your Ground laws:

Remove the Immunity Clause [KSA 21-5231]

As noted above, of the 25 states with Stand Your Ground laws, only six have immunity clauses. Removing the immunity clause would bring Kansas in line with the rest of the country in having more defendant-friendly self-defense laws, but that do not unfairly privilege shooters over victims and provide more shielding than other areas of the law provide.

Statutorily define reasonable belief

In Kansas, Florida, Texas, and other SYG states, the law hinges upon an individual's "reasonable belief" that use of force was necessary or justifiable. However, none of the statutes explicitly define what constitutes reasonable belief, nor do they note whether there should be an objective or subjective standard. Kansas has dealt with this in a piecemeal fashion – major court decisions like State v. Ultreras have set out a dual objective-subjective standard, but the rationale the court uses leans more heavily on the subjective standard. Codifying the objective reasonable person standard would provide more clarity and make it easier for courts to consistently apply the law.

Shift the burden of proof for immunity to the defendant

If the Immunity Clause remains, the legislature could statutorily change who bears the burden of proof to the defendant who would like the immunity to apply. While other states like Florida[21] and Colorado[22] force the defendant to prove that they are entitled to immunity, the Court in Ultreras incongruously decided that the state should bear the burden of proving that the defendant is not entitled to immunity, despite acknowledging that the Kansas law was "almost identical" to the Florida law that places the burden on the defendant.[23] In addition, the Florida statute includes a second subsection that is similar to K.S.A. 21-3219(b).

There is no good legal reason why the Kansas courts, when interpreting a near identical statute, should so radically shift the burdens in proving reasonable belief. South Carolina, a state with an identical statute, also places the burden to prove immunity on the defendant.[24] The Ultreras decision could be overruled via changes to the statute, to make Kansas more in line with Florida and the other six immunity states that place the burden of production on the defendant to prove they are entitled to immunity. However, as noted above, the legislature should prioritize removing the immunity altogether.

Confine Application to actual danger [Revise K.S.A. 21-5224(A)]

As it is currently construed, one can use force to prevent imminent death, great bodily harm, unlawful entry into property, or the removal of another person against such person's will from a dwelling.[25] This allows the use of lethal force to stop property crimes like trespassing. This is in stark contrast to other states and the Model Penal Code, which only allow for "appropriate" force, and do not authorize the use of deadly force to protect property.[26]

Repeal private citizen arrest provisions [K.S.A. 21-5228]

Encouraging or even codifying protections for so-called "citizen arrests" is reckless and has been proven to be dangerous. Private citizens are completely ill-equiped for these situations, and critically lack any sense of what could be considered "justified" by law enforcement officers or experts.

Individuals brashly and erroneously trying to use similar laws have killed innocent people, perhaps most prominantly Trayvon Martin and Ahmaud Arbery.

Create a statutory bar to immunity for law enforcement officers

Finally, and perhaps most importantly, legislators should focus on fixing Kansas law to ensure that it applies only to those situations for which it was originally intended—private citizens involved in physical altercations.

Law enforcement officers already have legal standards they must meet in the carrying out of their official duties via the Fourth Amendment's prohibition on excessive use of force. That standard is already fairly lenient towards officer's discretion; additional barriers to holding police accountable for deaths in custody are not necessary, and as demonstrated by C.J. Lofton's death, profoundly tragic.

At a bare minimum, remove barriers to civil liability for officers that violate the Fourth Amendment

Officers who take the life of a person in custody should be held accountable for their actions, and the civil justice system is one way to do so. Shielding law enforcement from accountability through laws like Stand Your Ground and the doctrine of qualified immunity must end.

[14] Because the shooter is immune from all suits, they cannot be sued by an individual who may have been mistakenly harmed by their use of force. This means that innocent bystanders are, in effect, deprived of a remedy for any harm they suffer.
[15] https://www.kwch.com/2022/01/18/sedgwick-county-da-hold-briefing-tuesday-morning/
[16] https://journals.lww.com/journalacs/pages/default.aspx
[17] David K. Humphreys, Antonio Gasparrini, and Douglas J. Wiebe, "Evaluating the Impact of Florida's 'Stand Your Ground' Self-defense Law on Homicide and Suicide by Firearm: an Interrupted Time Series Study," JAMA Internal Medicine 177, no. 1 (2017): 44–50.
[18] https://www.nytimes.com/2015/05/04/opinion/stand-your-ground-makes-no-sense.html
[19] Chandler McClellan and Erdal Tekin, "Stand Your Ground Laws, Homicides, and Injuries," Journal of Human Resources 52, no. 3 (2017): 621–653.
[20] https://www.kake.com/story/45686513/this-was-not-the-intent-kansas-lawmaker-says-its-time-to-revisit-stand-your-ground-law-after-teen-dies-in-custody?utm_medium=social&utm_source=facebook_KAKE_News&fbclid=IwAR27Z_w84PvZufH0MJKsWNhC-jlRAmfCtRvox-ZDyg59MZRQ7uL12mZQ3Rc
[21] See Peterson v. State, 983 So. 2d 27, 28 (Fla. Dist. Ct. App. 2008).
[22] See Guenther, 740 P.2d at 971.
[23] Ultreras, 296 Kan. at 839 (noting "[the] Florida statute includes a provision that is almost identical to K.S.A. 21-3219(a).
[24] State v. Jones, 786 S.E.2d 132 (2016).
[25] K.S.A. §§ 21-5223-4.
[26] See, e.g. Model Penal Code § 3.06 (3)(d). Repeal of § 21-5223 and § 21-5224 would preclude the use of deadly force to protect property.