



LRO SNAPSHOT

A policy brief from the Legislative Research Office

Stand your Ground and Self Defense Laws

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In 2005, Florida became the first state to enact a controversial type of law known as a stand-your-ground law. Since that time, 26 other states have passed some version of a stand-your-ground law.¹ Additionally, at least seven states have adopted stand-your-ground policies via case law, jury instructions, or other means.

What is a Stand-Your-Ground law?

As its name implies, generally a stand-your-ground law provides legal justification for the use of force, including deadly force, when a person: (1) is attacked in any place where he or she is lawfully present; (2) reasonably believes that force is needed to protect himself, herself, or others from imminent death or serious bodily injury; and (3) is not engaged in unlawful activity at the time of the event.

Stand-your-ground laws are an expansion of a common law principle of self-defense, known as the castle doctrine. In a nod to the phrase “a man’s home is his castle,” the castle doctrine provides that a person has no duty to retreat in his or her home and may use reasonable force, including deadly force, to defend his or her property, person, or another. However, when outside of the home, the doctrine imposes a duty to retreat, if possible, before using deadly force.

The duty to retreat — which requires the threatened person to retreat to a place of safety, if possible — distinguishes stand-your-ground laws from the castle doctrine, as well as other self-defense statutes in other states. Additionally, in states with stand-your-ground laws, justified use of force serves as a bar to criminal liability and, in some states, civil liability².

Stand-Your-Ground is a Hot Topic

Stand-your-ground laws generate heated debate. Supporters of stand-your-ground laws believe the laws give law-abiding individuals fundamental self-defense rights. A person has the right to defend himself or herself at all times. By eliminating the duty to retreat, the law places the safety of the victim and his or her life ahead of the assailant.

Opponents call such laws “shoot first” laws and believe that avoiding confrontation when possible actually protects lives. Additionally, opponents note that stand-your-ground laws are a solution in search of a problem because existing self-defense laws offer adequate protections. A 2018 Rand Corporation report notes that moderate evidence exists to show that stand-your-ground laws may actually increase homicide rates.³

Nebraska’s Self-Defense Laws

Nebraska has not enacted a stand-your-ground law. Nebraska’s self-defense laws are codified at Neb. Rev. Stat. secs. 28-1406 to 28-1416.

A key self-defense statute is Neb. Rev. Stat. sec. 28-1409, which includes:

- A justification for the use of force when a person believes: (1) it is “immediately necessary” to protect himself, herself, or others against the use of unlawful force by the other person on the present occasion; (2) he or she has been unlawfully dispossessed of his or her property and is making a justified reentry or attempt to recapture the property; and (3) that force is necessary to protect himself, herself, or others against death or serious bodily harm.
- A justification for the use of deadly force when the actor believes that deadly force is necessary to protect himself, herself, or others against death, serious bodily harm, kidnapping, or sexual assault.
- A duty to retreat if the actor can avoid the necessity of using deadly force.
- Codifying the castle doctrine by specifically providing that the actor is not required to retreat from his or her dwelling or place of work.

Via the passage of Laws 2012, LB 804, in addition to criminal actions, the justification defenses prescribed in Neb. Rev. Stat. secs. 28-1406 to 28-1416 are available in civil

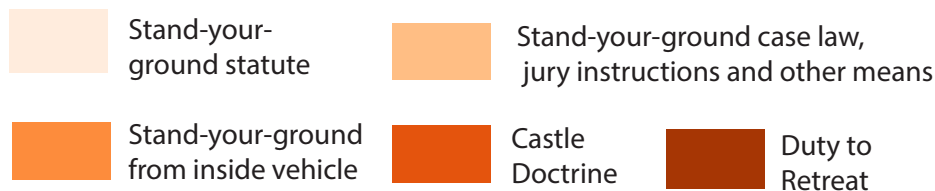
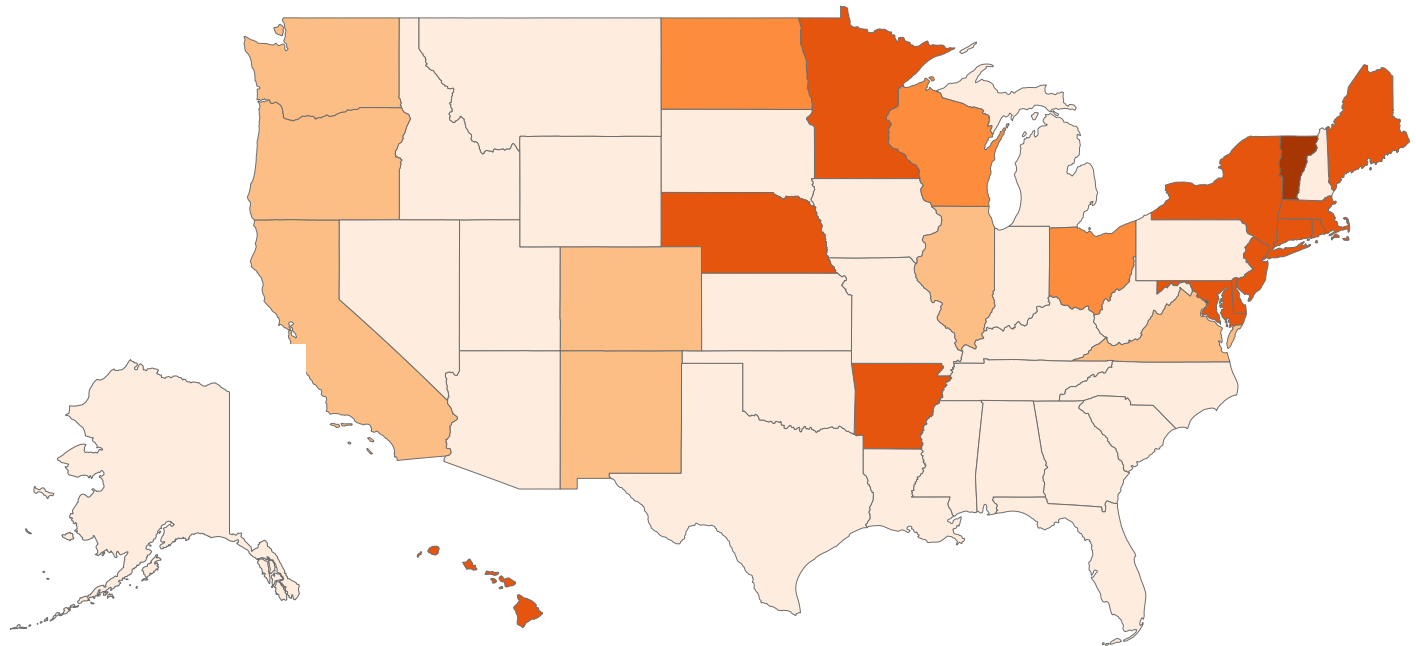
1. States that have enacted stand-your-ground Legislation: AL, AK, AZ, FL, GA, ID, IA, IN, KS, KY, LA, MI, MS, MO, MT, NV, NH, NC, OK, PA, SC, SD, TN, TX, UT, WV, and WY.

2. Florida is an example of a state that provides both criminal and civil immunity under its stand-your-ground statute at Fla. Stat. Ann. Sec. 776.032.

3. The Science of Gun Policy: A Critical Synthesis of Research Evidence on the Effects of Gun Policies in the United States. Pages, 73-83, Stand-Your-Ground Laws. Santa Monica, CA: RAND Corporation, 2018.



Stand-Your-Ground Policy by State



actions for assault and battery and intentional wrongful death. If justification for the use of force is found, financial recovery is barred in the civil action.

Other states' self-defense laws

Self-defense laws throughout the country are as varied as the states themselves. In addition to the 27 states that have enacted some form of stand-your-ground legislation, another seven states have adopted stand-your-ground policies via case law, jury instructions, or other means. Stand-your-ground laws in three states limit the law's application to only when a person is in his or her home or vehicle.

Like Nebraska, several states have codified or follow the castle doctrine and require a duty to retreat in public settings. Vermont and Washington D.C. require citizens to retreat from assailants even within their homes.

If you have additional questions or would like more detailed

information regarding stand-your-ground laws, please feel free to contact the Legislative Research Office.

For more information

1. National Task Force on Stand Your Ground Laws: Report and Recommendations (2015), American Bar Association, www.americanbar.org/content/dam/aba/images/diversity/SYG_Report_Book.pdf
2. The Science of Gun Policy: A Critical Synthesis of Research Evidence on the Effects of Gun Policies in the United States. Stand-Your-Ground Laws, Pages, 73-83. Santa Monica, CA: RAND Corporation, 2018. www.rand.org/content/dam/rand/pubs/research_reports/RR2000/RR2088/RAND_RR2088.pdf
3. Self Defense and "Stand Your Ground" (2018) www.ncsl.org/research/civil-and-criminal-justice/self-defense-and-stand-your-ground.aspx