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COMMENT

WHY MARYLAND SHOULD STAND ITS GROUND INSTEAD OF RETREAT

By: Alicia M. Kuhns*

I. INTRODUCTION

In the United States, a majority of states do not require one faced with the threat of death to attempt a retreat before defending themselves.¹ These states employ stand your ground laws which bar the prosecution of individuals who use deadly force against a deadly aggressor without first attempting to retreat.² A minority of states, including Maryland, enforce a duty to retreat instead of stand your ground.³ Under a duty to retreat, a defendant may not successfully claim self-defense if he could have safely retreated, but failed to do so, before using deadly force against a deadly attacker.⁴ However, the line between stand your ground and duty to retreat is not clear cut.⁵ Doctrines, such as the English common law's Castle Doctrine, have blurred the line on when retreat is required.⁶ As a result, many states have expanded the traditional Castle Doctrine to apply to guests, cohabitants, places of business, etc., making the rule of retreat more obsolete.

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¹ Cynthia V. Ward "Stand Your Ground" and Self-Defense, 42 Am. J. Crim. L. 89. e.g., FLA. STAT. § 776.032(1) (2014) ("A person who uses or threatens to use force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in such conduct and is immune from criminal prosecution for the use or threatened use of such force . . ."); *Dorsey v. State*, 74 So.3d 521, 526 (Fla. Dist. Ct. App. 2011) (discussing the legislative intent of section 776.013 to abolish the common law duty to retreat).

² *Id.*

³ *Id.*

⁴ See, e.g., CONN. GEN. STAT. § 53(a)-19(b) (2014) ("[A] person is not justified in using deadly physical force upon another person if he or she knows that he or she can avoid the necessity of using such force with complete safety (1) by retreating . . ."); see also *Burch v. State*, 696 A.2d 443, 458 (Md. 1997) (citations omitted) (stating that Maryland's common-law retreat rule requires a person "to retreat or avoid danger if such means were within his power and consistent with his safety" as an essential element to self-defense).

⁵ Christine Catalfamo, Stand Your Ground: Florida's Castle Doctrine for the Twenty-First Century, 4 Rutgers J.L. & Pub. Pol'y 504, 505 (2007).

⁶ *Id.*

This comment will analyze Maryland's duty to retreat in comparison to a majority of states' adoption of stand your ground laws. Particularly, it will examine the effects of the duty to retreat on innocent victims and the law's conflict with the Castle Doctrine. Part II will discuss the background of duty to retreat and Castle Doctrine in the United States and the interplay between the two in Maryland. Part III will explain the negative effects of duty to retreat, particularly on women and victims of domestic violence. Part IV will propose moving away from a duty to retreat in Maryland towards stand your ground. To provide support for advocating change in Maryland, a comparative analysis of Maryland to other states that have passed similar laws will be conducted.

II. HISTORICAL DEVELOPMENT

A. *Self-defense in America*

In early England, a man convicted of homicide who claimed self-defense could not be acquitted unless the murder was done in the execution of law.⁷ This left citizens who acted in self-defense with one option to avoid execution, receiving a pardon from the King.⁸ As a result of this limited option, the pardoning process began to become a formality and eventually self-defense became a defense.⁹ However, one raising the defense still had limitations, having to prove the individual acted out of necessity.¹⁰ Along with the doctrine of necessity, citizens were also required to first retreat before acting in self-defense, unless in one's own home.¹¹ In response to England's worry that "the right to defend might be mistaken as the right to kill," they safeguarded the law by requiring a man to "retreat to the wall" before acting, and thus began the doctrine of a duty to retreat.¹²

While the formation of the United States was built on English principles and common law, after its separation from England the United States began to move away from English common law.¹³ America transitioned into its own ideologies and beliefs¹⁴ such as ideals of honor, bravery and a right to

⁷ Joseph H. Beale, Jr., *Retreat from a Murderous Assault*, 16 HARV. L. REV. 567, 569 (1903).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 574.

¹² F. Baum & J. Baum, LAW OF SELF-DEFENSE 6 (1970).

¹³ *Id.*

¹⁴ Richard Maxwell Brown, *Southern Violence--Regional Problem or National Nemesis?: Legal Attitudes Towards Southern Homicide in Historical Perspective*, 32 VAND. L. REV. 225, 232 (1979).

self-defense.¹⁵ As these ideologies were developing, so too were the laws of this country.¹⁶ With the make-up of the American frontier vastly differing from England, so did the duty to retreat.¹⁷ Many in the United States began to find importance in the right to defend one's honor and home.¹⁸

The Supreme Court eventually made a decision based on these American ideologies, giving them legal validity in 1895 when it solidified the Castle Doctrine in American Law.¹⁹ In *Beard v. United States*, the Court stated that there was at least one place "where a man need not retreat any further, where he need not go away from the danger, and that is in his dwelling-house."²⁰ The concept of self-defense also had deep roots in American state courts.²¹ Early cases displayed the importance of a man's ability to repel force in defense of himself, his home, or when one manifests an intent to commit a felony against him.²² These strong American ideologies favoring self-defense resulted in states extending the non-duty to retreat.²³ This extension started with the home, as set down by the court in *Beard*, by states eliminating retreat in any situation where there was a threat of imminent death or severe bodily harm.²⁴ This change was based on society's increased understanding of human nature and the complicated measurement of one's morals that a duty to retreat required in situations where reflection could not be demanded in the presence of such imminent danger.²⁵

In such a case he is not obliged to retreat, but may pursue his adversary till he find himself out of danger; * * * [T]he right of self-defense in cases of this kind is founded on the law of nature; and is not, nor can be, superseded by any law of society. * * * The right extends to the protection of the person from great bodily harm.²⁶

¹⁵ CHARLES S. SYDNOR, THE PURSUIT OF SOUTHERN HISTORY, *THE SOUTHERNER AND THE LAWS* 62 (George Brown Tindall ed., La. State Univ. Press 1964).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Beard v. United States*, 158 U.S. 550, 555 (1895).

²⁰ *Id.*

²¹ 1 Bishop on Criminal Law, 5th ed., sec. 865.

²² Wharton on Criminal Law, vol. 2, sec. 1019.

²³ *Brown v. United States*, 256 U.S. 335, 343 (1921).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Runyan v. State*, 57 Ind. 80, 83-84 (Sup. Ct. 1877).

As the country increased towards urbanization, this concept of no duty to retreat began to vary in certain areas.²⁷ States differed on the level of force available in defending one's self and the varying circumstances applicable to self-defense.²⁸ Some of these varying circumstances related to the party whom one is defending, i.e. himself, his family or his home.²⁹ In remaining consistent with the underlying principles found in the Castle Doctrine of the privilege of non-retreat and protection of life, liberty, and property, many states enacted a right to stand one's ground with honor and the freedom to defend.³⁰ And while a majority of states moved away from a duty to retreat to a stand your ground law, some states still use this doctrine, including Maryland.³¹ However, all states have an exception under the Castle Doctrine, which allows a person attacked in their home to stand their ground and fight.³²

The Castle Doctrine is not only limited to the physical dwelling, however, since there is a general acknowledgement among the states that one is not required to retreat from his own curtilage.³³ The difficulty in determining what is considered part of the "curtilage" is one of the reasons so many states began to move toward expanding the Castle Doctrine.³⁴ Using "curtilage" to define a dwelling where one need not retreat extended the doctrine to include outbuildings, yards and gardens around the home and porches.³⁵ States began to extend this non-retreat area to include spaces outside the curtilage but still on one's own grounds.³⁶ This area has even been extended by some states to include an occupied vehicle³⁷ or a tent.³⁸

This extension is not uniform among all states. Some states have extended the doctrine further to other persons and other forms of one's "castle," such as businesses.³⁹ Some courts even refer to the stand your

²⁷ See James D. Brewer, *The Danger From Strangers: Confronting The Threat Of Assault* 119 (1994) ("The security that comes from knowing how to protect yourself cannot be equaled.").

²⁸ See Joshua Dressier, *Understanding Criminal Law* 228 (3d ed. 2001).

²⁹ *Id.*

³⁰ Christine Catalfamo, *Stand Your Ground: Florida's Castle Doctrine for the Twenty First Century*, 4 RUTGERS J.L. & PUB. POL'Y 504 (2006-2007).

³¹ Catherine L. Carpenter, *Of the Enemy Within, The Castle Doctrine, and Self-Defense*, 86 MARQ. L. REV. 653, 663 (2003).

³² *Id.*

³³ See *Hicks v. State*, 108 So. 612 (Ala. Ct. App. 1926); *State v. Frizzelle*, 89 S.E.2d 725 (N.C. 1955); *State v. Brooks*, 60 S.E. 518 (S.C. 1908).

³⁴ 40 Am Jur. 2d Homicide § 165.

³⁵ *Id.*

³⁶ *State v. Quick*, 135 S.E. 800 (S.C. 1926).

³⁷ *Little v. State*, 111 So. 3d 214, 220 (Fla. Dist. Ct. App. 2013).

³⁸ *State v. Marsh*, 593 N.E.2d 35 (Ohio Ct. App. 1990) (stating there is no duty to retreat from a nearby camper who threatens violence).

³⁹ See *State v Sipes*, 209 N.W. 448 (Iowa 1926); See e.g., *Commonwealth v. Johnston*, 263 A.2d 376 (Pa. 1970) (stating that dwelling expressly extended to

ground law as the “American Rule,”⁴⁰ which holds that one is not required to retreat whether he is attacked at home or elsewhere; instead, he can stand his ground.⁴¹ This further illustrates the deep roots of the stand your ground laws in the United States.⁴²

B. Maryland’s Duty to Retreat and Extension of the Castle Doctrine

Maryland is in the minority of states requiring a duty to retreat before acting in self-defense.⁴³ Maryland requires one “to retreat or avoid danger if such means [are] within his power and consistent with his safety.”⁴⁴ In order to invoke a successful defense, a defendant must show that it was not possible to retreat safely.⁴⁵ This requires a defendant to show that he could not retreat at all or that he had already retreated as far as possible.⁴⁶

The one exception to Maryland’s duty to retreat is the Castle Doctrine.⁴⁷ This doctrine derives from the principle “that ‘a man’s home is his castle’ and his ultimate retreat.”⁴⁸ If a man is attacked in his own home he is not required to retreat in order to escape the danger.⁴⁹ Instead of retreat, a man may stand his ground and, if it is necessary to stop the attacker, he may use deadly force.⁵⁰

Following many other states, Maryland has extended the Castle Doctrine to include protection for those other than the homeowner.⁵¹ In determining that retreat is not necessary for guests, the Maryland Court of Appeals adopted the reasoning of Justice Cardozo in *People v. Tomlins*, 107 N.E. 496, 497-98 (N.Y. 1914):⁵²

include one’s place of business); *See e.g., State v. Hayes*, 502 S.E.2d 853 (N.C. Ct. App. 1998) (holding that there is no duty to retreat assault occurs in the dwelling, place of business, or premises of the person assaulted, provided the person assaulted is free from fault in bringing on the difficulty.).

⁴⁰ *Cooper v. United States*, 512 A.2d 1002, 1004 (D.C. 1986).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *See Gainer v. State*, 391 A.2d 856 (Md. Ct. Spec. App. 1978); *DeVaughn v. State*, 194 A.2d 109, 112 (Md. 1963), cert. denied, 376 U.S. 527 (1964); *Burch*, 696 A.2d at 458.

⁴⁴ *Bruce v. State*, 145 A.2d 428, 433 (Md. 1958).

⁴⁵ *Barton v. State*, 420 A.2d 1009 (Md. Ct. Spec App. 1980).

⁴⁶ *Id.*

⁴⁷ *Gainer*, 391 A.2d at 860-61.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Crawford v. State*, 190 A.2d 538, 541 (Md. 1963).

⁵¹ *Gainer*, 391 A.2d at 861-62.

⁵² *Id.*

It is not now and never has been the law that a man assailed in his own dwelling is bound to retreat. [W]hy . . . should one retreat from his own house, when assailed by a partner or cotenant, any more than when assailed by a stranger who is lawfully upon the premises? Whither shall he flee, and how far, and when may he be permitted to return?⁵³

The court's use of Justice Cardozo's logic demonstrates that Maryland has favored protecting those within a home, regardless of the status of the attacker.⁵⁴ This strong application of the Castle Doctrine displays Maryland's belief that self-defense of anyone in the home, regardless of their status, should come before the rights of the attacker.⁵⁵

In defining what constitutes a home or dwelling, the Maryland courts have quoted the Restatement of Torts Second: "any building or habitation, or part of it, in which the actor is at the time temporarily or permanently residing and which is in the exclusive possession of the actor, or of a household of which he is a member."⁵⁶ And while the Restatement narrowly defines a dwelling to only those areas used as a residence, it broadly extends the Castle Doctrine to include temporary guests.⁵⁷ The Maryland courts ultimately confirmed this extension, ruling that a lower court's decision not to apply the Castle Doctrine to one residing in a residence temporarily as a guest was too restrictive.⁵⁸ In doing so, it held that the Castle Doctrine must be interpreted in a broader sense to include temporary guests as members of the household.⁵⁹ For purposes of self-defense, a temporary guest is considered to be in his own dwelling and therefore has no duty to retreat.⁶⁰ This extension is modified, however, by excluding those who come to the house with some purpose other than residing, such as a business visitor.⁶¹

Along with extending the Castle Doctrine to include guests, Maryland has also eliminated the requirement to retreat for multiple habitants of a residence.⁶² This move towards expanding the Castle Doctrine and lowering the requirement for retreat has been further demonstrated in Maryland's decisions regarding self-defense in one's place of business.⁶³ While the Maryland courts have not made a decision in criminal cases, Section 5-808 of the Courts and Judicial Proceedings Article of the Maryland Code

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Gainer*, 391 A.2d at 861-62.

⁵⁶ *Barton*, 420 A.2d at 1011-12.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Barton*, 420 A.2d at 1011-12.

⁶¹ *Id.*

⁶² *Gainer*, 391 A.2d at 861-62.

⁶³ *Id.*

addresses it on a civil level.⁶⁴ This statute gives immunity from civil lawsuits for the use of force to defend one's home or business.⁶⁵ Therefore, it is arguable that this statute makes the Castle Doctrine applicable to actions committed to defend a person's business.⁶⁶ And even though there is no immunity if a Defendant has been convicted of certain charges in connection with the incident, the statute shows a further extension of the Castle Doctrine in Maryland.⁶⁷ This demonstrates that Maryland has moved towards lowering the standards for the requirement of retreat in self-defense cases.⁶⁸

III. THE NEGATIVE EFFECTS OF MARYLAND'S DUTY TO RETREAT

A. *A Duty to Retreat Has Negative and Disproportionate Impact on Women*

Maryland's duty to retreat raises gender-sensitive issues because of its disproportionate impact on females.⁶⁹ Among those harmed by the duty to retreat are domestic violence victims who turn on their assailants.⁷⁰ Maryland provides an exception from a duty to retreat for co-habitants.⁷¹ This protects domestic violence victims who act in self-defense in their homes.⁷² However, the exception requires them to retreat when faced with danger after leaving the abusive home, when the level of danger can be heightened.⁷³ Once out of the home, the Castle Doctrine will not apply and a victim will be required to retreat before defending against her abuser.⁷⁴ As a result, this law discourages women who live with their abusers from removing themselves from dangerous relationships.⁷⁵

Women are abused in an estimated twelve percent of all marriages.⁷⁶ Maryland's co-habitant exception for women in their home creates a gap in

⁶⁴ *Baltimore Transit Co. v. Faulkner*, 20 A.2d 485 (Md. 1941).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Bureau of Justice Statistics, U.S. Dep't of Justice, Sourcebook of Criminal Justice Statistics 2000 Table 3.17 at 196 (Kathleen Maguire & Ann Pastore eds., 2001).

⁷⁰ *Id.*

⁷¹ *Gainer*, 391 A.2d at 861-62.

⁷² Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 25 (1991).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Judith E. Koons, *Gunsmoke and Legal Mirrors: Women Surviving Intimate Battery and Deadly Legal Doctrines*, 14 J.L. & POL'Y 617, 657 (2006).

protection for domestic violence victims choosing to leave the home.⁷⁷ Only providing self-defense protection for battered women in the home exposes women to a greater danger of abuse.⁷⁸ Furthermore, when considering the phenomenon of separation assault, the requirement of retreat could cause women more harm.⁷⁹

Separation assault is an attack on the woman's body in which her partner keeps her from leaving, retaliates if she tries to separate herself, or forces her to return.⁸⁰ Therefore, a decision to retreat from the home can trigger the danger of death or bodily harm for the woman.⁸¹ In these types of cases, a duty to retreat requires a woman who has left the home to retreat if her abuser finds her and retaliates, instead of acting in self-defense.⁸² A law that supports battered women in the home, but does not protect them once they leave, discourages women from removing themselves from dangerous relationships.⁸³

B. Maryland's Duty to Retreat Has the Potential to Promote the Wrong Public Policy

Maryland's duty to retreat also harms female victims on a broader scale.⁸⁴ Many feminists support stand your ground laws because they find that the logic "you could have run away" may not work when faced with a stalker or other predator.⁸⁵ An innocent woman threatened by a much more powerful male criminal should not have to worry about whether she must retreat in order to avoid prosecution.⁸⁶

Policy concerns for preserving human life should be greater than protecting those engaged in unlawful actions.⁸⁷ This ideology has deep roots in American culture.⁸⁸ In 1876, the Supreme Court of Ohio noted the importance of this policy concern:⁸⁹

⁷⁷ *Id.* at 657.

⁷⁸ *Id.*

⁷⁹ Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 25 (1991).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Ilya Shapiro, *Don't Retreat on 'Stand Your Ground' Laws*, NATIONAL REVIEW, Oct. 29, 2013, <http://www.nationalreview.com/corner/362516/dont-retreat-stand-your-ground-laws-ilya-shapiro>.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Erwin v. State*, 29 Ohio St. 186 (Sup. Ct. 1876).

⁸⁸ *Id.* at 200.

⁸⁹ *Id.*

The law which is best calculated to protect and preserve human life, is of great weight, and we can safely say, that the rule announced is, at least, the surest to prevent the occurrence of occasions for taking life; and this, by letting the would-be robber, murderer, ravisher, and such like, know that their lives are, in a measure, in the hands of their intended victims.⁹⁰

A duty to retreat is not only against public policy for preserving innocent human lives, but it also goes one step further by not protecting those acting in self-defense of another.⁹¹ An example of such a case is *State v. Barlow*, where the defendant invoked the stand your ground defense for using deadly force while protecting a third person.⁹² In an effort to stop someone from raping an unconscious victim, the defendant pointed a gun and injured the assailant.⁹³ The Supreme Court of Kansas found that the policy concern for protecting those acting in self-defense for others was so strong that they allowed the stand your ground immunity statute to override a jury's verdict.⁹⁴ Because a district judge had decided before sentencing that the immunity applied, the Supreme Court affirmed and vacated Barlow's attempted second-degree murder conviction, ultimately dismissing that charge.⁹⁵ The stand your ground law was found to apply under the theory that his use of force was necessary to protect another.⁹⁶

Unlike stand your ground, as illustrated by *Barlow*, duty to retreat puts the person attacked at the focus of criminal law instead of the original assailant, thus creating huge policy concerns.⁹⁷ Justice Oliver Wendell Holmes wrote in the 1921 case of *Brown v. United States*, that “detached reflection cannot be demanded in the presence of an uplifted knife.”⁹⁸ Nearly a century later, we should not demand more of crime victims.⁹⁹

A duty to retreat puts victims at an unfair advantage in more ways than one.¹⁰⁰ Maryland's own case law has demonstrated a concern for victims who cannot defend themselves because of a difference in weight or height,

⁹⁰ *Id.*

⁹¹ *State v. Barlow*, 303 Kan. 804 (Sup. Ct. 2016).

⁹² *Id.* at 805.

⁹³ *Id.* at 806.

⁹⁴ *Id.* at 817.

⁹⁵ *Id.*

⁹⁶ *Id.* at 805.

⁹⁷ Madison Fair, *Dare Defend: Standing for Stand Your Ground*, 38 L. & PSYCHOL. REV. 153 (2014).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Bruce*, 145 A.2d at 433

most common with women against men.¹⁰¹ Therefore, requiring victims to retreat contradicts Maryland's own public policy.¹⁰² Furthermore, not protecting third parties who act to defend the most vulnerable further promotes policy favoring the rights of criminals over the protection of the innocent.¹⁰³

IV. COMPARATIVE ANALYSIS OF MARYLAND TO OTHER STATES SUPPORTS A CHANGE IN MARYLAND'S RETREAT LAW

There are many differences among the states in their applications of stand your ground.¹⁰⁴ This has resulted in different procedural requirements for stand your ground laws.¹⁰⁵ For example, states differ in their tests for when stand your ground can apply in the first place.¹⁰⁶ In Kansas, when a defendant raises justification for use of force because he was "standing his ground" in self-defense, a probable cause standard is used by the court. The Kansas Supreme Court ruled that a judge can *sua sponte* overturn a jury verdict by finding that the state failed to meet its substantially lesser burden in showing probable cause that a crime was committed, that the defendant committed it, and that any argument that the defendant used lawful force, by standing his ground, was without merit.¹⁰⁷

States have also employed requirements for when a defense of stand your ground law cannot be raised.¹⁰⁸ In holding that a defendant cannot raise stand your ground for the first time on appeal, the Kansas Supreme Court noted the importance of the statute's purpose.¹⁰⁹ It noted that the purpose of the statute is to protect individuals from the burdens of prosecution and conviction.¹¹⁰ Therefore, that purpose cannot be effected when immunity is raised for the first time on appeal since prosecution and conviction have occurred.¹¹¹ This helps prevent the abuse of stand your ground as a "last shot" defense.¹¹²

¹⁰¹ *Id.* (considering the character of the deceased and the evidence of disparity in the size and weight between the parties in determining if the accused acted in self-defense).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See *Barlow*, 303 Kan. at 804; *State v. Ultreras*, 296 Kan. 828, 843-44. (Sup. Ct. 2013).

¹⁰⁵ *Barlow*, 303 Kan. at 815.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 817.

¹⁰⁸ *Ultreras*, 296 Kan. at 843-44.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

A. *Stand Your Ground Laws Offer Other Safeguards That Promote the Same Public Policy as Duty to Retreat but Better Protect Vulnerable Victims*

A majority of states have expanded the Castle Doctrine and enacted stand your ground instead of duty to retreat.¹¹³ In doing so, those states have employed other safeguards that protect the concerns of duty to retreat legislatures without prioritizing the rights of criminals over innocent victims.¹¹⁴ Utah's stand your ground statute still requires a duty to retreat when the person exercising self-defense was the initial aggressor or was in combat by agreement.¹¹⁵ Furthermore, when a person has unlawfully entered a premise, such as a trespasser, they must retreat before exercising the right to self-defense.¹¹⁶

While Florida also follows stand your ground, it, like Utah, has other safeguards in place to make sure that the defense of self-defense is not mistreated.¹¹⁷ A person is justified in using deadly force if "he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony; or" in protection of their home (Castle Doctrine includes dwelling, residence or occupied vehicle).¹¹⁸ This ruling demonstrates that Florida still has a reasonable and imminence requirement.¹¹⁹ Florida follows the majority of states who have also eliminated duty to retreat but still require a level of imminence and reasonableness.¹²⁰

This standard of imminence functions similarly to the retreat rule.¹²¹ However, while retreat rules ask jurors to consider why a defendant did not attempt to retreat, the imminence requirement encourages jurors to ask whether there was time to retreat.¹²² This lifts the duty on the victim to

¹¹³ See *Gainer*, 391 A.2d 856; *DeVaughn*, 194 A.2d at 112; *Bruce*, 145 A.2d at 433; *Burch*, 696 A.2d at 458.

¹¹⁴ *Ray v. Wal-Mart Stores, Inc.*, 359 P.3d 614 (Sup. Ct. 2015).

¹¹⁵ *Id.* at 624.

¹¹⁶ *Id.*

¹¹⁷ *Little v. State*, 111 So. 3d 214 (Fla. Dist. Ct. App. 2013).

¹¹⁸ *Id.* at 220.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Susan L. Pollet, *Economic Abuse: The Unseen Side of Domestic Violence*, 83 N.Y. ST. B.J., 40, 40-41 (2011); Maria L. Imperial, *Self-Sufficiency and Safety: Welfare Reform For Victims of Domestic Violence*, 5 GEO. J. ON FIGHTING POVERTY 3, 10 (1997).

¹²² *Id.*

retreat while still asking the jury to consider the possibility of retreat as one factor in determining self-defense.¹²³

On top of the imminent and necessity requirement, some states go one step further, employing safeguards in an effort to stringently evaluate the threat of the assailant.¹²⁴ Pennsylvania's stand your ground law demands imminence and necessity along with requiring that the person against whom the force is used displays, or otherwise uses, a firearm or other weapon capable of lethal use.¹²⁵ This further protects against the misuse of self-defense by requiring more proof that the alleged threat was reasonable.¹²⁶ This law effectively protects the innocent rather than those engaging in criminal or illegal conduct.¹²⁷ It allows those faced with a reasonable threat of danger from someone with a lethal weapon to defend themselves, while also requiring the reasonableness of the threat to be defined in a narrower sense with the requirement of a lethal weapon.¹²⁸

As one of the more recent states to adopt stand your ground laws, Pennsylvania also modified the immediacy and necessity requirements found in many other state statutes.¹²⁹ Under Pennsylvania's new statute, a person does not have to retreat if he "believes it is immediately necessary to do so to protect himself against death, serious bodily injury, kidnapping, or sexual intercourse by force or threat."¹³⁰ This means that if the attacker tries to flee the scene, the use of force against him is no longer justified.¹³¹ Pennsylvania's modification prevents those that would abuse this defense from doing so in times when deadly force is no longer justified because the threat has ended.¹³²

Other states have recognized the importance of expanding the Castle Doctrine, resulting in a "middle ground" approach between duty to retreat and stand your ground.¹³³ Washington D.C. imposes no duty to retreat, but instead, "permits the jury to consider whether a defendant, if he safely could have avoided further encounter by stepping back or walking away, was actually or apparently in imminent danger of bodily harm."¹³⁴ It allows the jury to determine whether the defendant acted too hastily and was too quick to pull the trigger.¹³⁵ And while there is no duty to retreat, there can be a

¹²³ *Id.*

¹²⁴ *Commonwealth v. Childs*, 142 A.3d 823 (Pa. 2016).

¹²⁵ 18 PA. CONS. STAT. § 505 (2017).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Commonwealth v. Rivera*, 108 A.3d 779 (Pa. 2014).

¹³⁰ 18 PA. CONS. STAT. § 505 (2017).

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Cooper v. United States*, 512 A.2d 1002, 1004-05 (D.C. 1986).

¹³⁴ *Id.*

¹³⁵ *Id.*

failure to retreat if, with all the surrounding circumstances, the jury determines the case was not truly one of self-defense.¹³⁶

Maryland's decision in extending the Castle Doctrine to include a place of business is similar to other states who eventually abandoned a duty to retreat for stand your ground.¹³⁷ Some states' laws, such as Pennsylvania, also required one to retreat before acting in self-defense with the Castle Doctrine exception.¹³⁸ Similar to Maryland, Pennsylvania began to slowly extend the Castle Doctrine to include one's place of business, eliminating a duty to retreat.¹³⁹ This extension by Pennsylvania ultimately led to it enacting a stand your ground law.¹⁴⁰

Mississippi is another state that employed a place of business exception and eventually enacted stand your ground.¹⁴¹ It did so by changing the language of its statute to require no duty to retreat if one is in a place where he has a right to be.¹⁴² Here, the law allows a defendant to claim self-defense even if the opportunity to flee and avoid the danger existed, if the appropriate circumstances existed at the time.¹⁴³ These circumstances include the requirement that a person be in a place where he has a right to be, and is not the aggressor.¹⁴⁴ Furthermore, the person must take care that his resistance is not disproportional to the attack.¹⁴⁵

As demonstrated by Pennsylvania, Mississippi, and many other states, the natural progression of extending the Castle Doctrine in Maryland follows other states that have done away with a duty to retreat.¹⁴⁶ Many states, like Maryland, have also extended the Castle Doctrine to include co-habitants.¹⁴⁷ In doing so, the courts recognized the policy that two people who share a residence have "equal rights to be in the castle" and neither has the right to eject the other.¹⁴⁸ And while some states may not have extended the Castle Doctrine per se, they still found other ways to protect co-habitants who acted in self-defense by applying a completely new approach.¹⁴⁹

¹³⁶ *Id.*

¹³⁷ *Commonwealth v. Johnston*, 263 A.2d 376 (Pa. 1970)

¹³⁸ *Id.* at 380.

¹³⁹ *Id.* at 379.

¹⁴⁰ 18 PA. CONS. STAT. § 505 (2017).

¹⁴¹ *Craig v. State*, 660 So.2d 1298, 1297 (Miss. 1995).

¹⁴² *Id.*

¹⁴³ *Haynes v. State*, 451 So. 2d 227, 229 (Miss. 1984).

¹⁴⁴ *Long v. State*, 52 Miss. 23, 34 (Sup. Ct. 1876).

¹⁴⁵ *Id.* at 34.

¹⁴⁶ See *Little*, 111 So.3d at 214, *State v. Brown*, 467 S.E.2d 922 (S.C. 1996), *Cooper*, 512 A.2d at 1006, *State v. Stevenson*, 344 S.E.2d 334, 336 (N.C. Ct. App. 1986).

¹⁴⁷ *Id.*

¹⁴⁸ See e.g., *Weiand v. State*, 732 So. 2d 1044 (Fla. 1999).

¹⁴⁹ *Cooper*, 512 A.2d at 1006.

This new approach was created by the Washington D.C. court.¹⁵⁰ The court seemed to favor giving Castle Doctrine instructions in cases of co-occupants, stressing the occupant's interest in remaining in the home.¹⁵¹ And while they ultimately did not extend Castle Doctrine to co-occupants, they did not necessarily require retreat either.¹⁵² Instead, they created a "middle ground" approach, having a jury consider all the circumstances.¹⁵³ Allowing failure to retreat to be considered with all the other circumstances surrounding the incident helped to determine whether the case was truly one of self-defense.¹⁵⁴ These circumstances are based on the facts surrounding the incident and include the possibility of retreat, the defendant's belief that death was imminent, and whether the defendant was too quick to pull the trigger.¹⁵⁵

While Maryland holds that there is no duty to retreat when both the aggressor and the victim are in the victim's castle, it still has not moved toward eliminating a duty to retreat.¹⁵⁶ Maryland's policy concerns for protecting victims when they are in a dwelling seems to disappear once they are outside.¹⁵⁷ Furthermore, when the Maryland court defined dwelling, it used the reasoning of *Crawford v. State*, stating that the rules of defending one's dwelling are generally similar to those of defending one's person.¹⁵⁸ This demonstrates that the logic behind the Maryland court's decision in eliminating a duty to retreat from the home is the same as one's person.¹⁵⁹ Maryland's extension of this doctrine shows that the law could be leaning more towards a version of stand your ground law.¹⁶⁰

In Maryland, self-defense falls under justified homicide.¹⁶¹ A homicide is only considered justified when one was not the aggressor, he believed the danger of losing his life was immediate, and that it was necessary to take the life of the deceased in order to save himself.¹⁶² These are elements that a defendant must show in order for the homicide to be deemed justified because it was committed in self-defense.¹⁶³

¹⁵⁰ *Id.*

¹⁵¹ *Id.*; see also *People v. Tomlins*, 107 N.E. 496, 497 (N.Y. 1914), *State v. Phillips* 187 A. 721 (Del. 1936).

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Cooper* 512 A.2d at 1006 (citing *Gillis v. United States*, 400 A.2d 311, 312 (D.C. 1979)).

¹⁵⁵ *Id.* at 1004.

¹⁵⁶ *Gainer*, 391 A.2d at 860-61.

¹⁵⁷ *Id.*

¹⁵⁸ *Barton*, 420 A.2d at 1011-12.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

Because Maryland still has other safeguards in place, like imminence and necessity, along with justified homicide, it should eliminate a duty to retreat and follow in the footsteps of the majority of states.¹⁶⁴ This standard would result in the defendant not being guilty at the moment they decide to fight back.¹⁶⁵ Instead, like other states' approaches, fighting back would simply be one factor considered before determining the defendant's guilt.¹⁶⁶ This allows the court to evaluate other factors, such as the size of the person using self-defense compared to the deceased.¹⁶⁷ It also allows the court to take into account other influences such as separation assault for victims of domestic abuse.¹⁶⁸

Pennsylvania's law is a good example of how stand your ground laws can be enacted to provide a bright-line rule for juries in evaluating the level of threat.¹⁶⁹ Since determining if threat is imminent can be especially difficult, requiring the assailant to have a lethal weapon allows juries to narrow the definition of "imminence" and "threat."¹⁷⁰ This would make the overall process more efficient.¹⁷¹

Abolishing a duty to retreat and enacting a stand your ground law would also better protect innocent victims.¹⁷² It would afford victims a law that no longer puts their self-defense actions at the focus of criminal law but rather the assailant's acts.¹⁷³ As the application of stand your ground laws have demonstrated, other safeguards can be employed more effectively.¹⁷⁴

The standard of imminence and necessity is already required in Maryland.¹⁷⁵ Therefore, enacting a stand your ground law in Maryland would allow individuals, who have a reasonable belief that danger of death is imminent and that the use of deadly force is necessary, to use such force against their attacker without first having to retreat.¹⁷⁶ The city of Baltimore has the second highest murder rate of major U.S. cities, as of October 2016.¹⁷⁷ This number has risen considerably over the last five years,¹⁷⁸ with

¹⁶⁴ Pollet, *supra* note 119, at 40-41; Imperial, *supra* note 119, at 10.

¹⁶⁵ *Id.*

¹⁶⁶ See Little, 111 So.3d at 214.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ 18 PA. CONS. STAT. § 505 (2017).

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Barlow, 303 Kan. at 804.

¹⁷³ *Id.*

¹⁷⁴ See Little, 111 So.3d at 214, Ray, 359 P.3d at 614.

¹⁷⁵ Crawford, 190 A.2d at 542.

¹⁷⁶ *Id.*

¹⁷⁷ Michael B. Sauter et al., *Most Dangerous Cities in America*, USA TODAY (Oct. 1, 2016), <https://www.usatoday.com/story/money/business/2016/10/01/most-dangerous-cities-america/91227778/> (citing the FBI's 2015 Uniform Crime Report).

¹⁷⁸ *Id.*

2015 being its deadliest year yet.¹⁷⁹ In a state with a city that has a dramatically rising crime level, stand your ground is almost necessary.¹⁸⁰ The risk of violence in this state is great and an individual should not face criminal prosecution for doing what is reasonably necessary to protect themselves.¹⁸¹

This high crime rate applies not only to homicide cases, but also to crimes against women.¹⁸² “One out of every eight adult women, or about 260,000 adult women out of 2.1 million women living in Maryland, has been the victim of forcible rape sometime in her lifetime.”¹⁸³ These statistics demonstrate that crimes against women are also a strong concern in Maryland.¹⁸⁴ Enacting stand your ground will resolve the duty to retreat’s disproportionate impact on females, while promoting public policy that ensures protection for innocent victims and encourages domestic violence victims to leave the abuse.¹⁸⁵

V. CONCLUSION

Maryland’s duty to retreat promotes a problematic public policy by putting the victim’s self-defense actions at the focus of criminal acts instead of the assailant’s acts.¹⁸⁶ Enacting stand your ground will take the focus away from the victim’s action by making it a consideration for the jury instead of an automatic offense.¹⁸⁷ It will also resolve the duty to retreat’s disproportionate impact on females while promoting public policy that ensures protection for the innocent, while also encouraging domestic violence victims to leave their abusers.¹⁸⁸

And while legislatures may fear that stand your ground laws will lead to abuse, the safeguards that other states have in place can better protect against

¹⁷⁹ Kevin Rector, *Deadliest Year in Baltimore History Ends with 344 Homicides*, THE BALT. SUN (Jan. 1, 2016), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-deadliest-year-20160101-story.html>.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ KENNETH J. RUGGIERO & DEAN G. KILPATRICK, *Rape in Maryland: A Report to the State*, 2 (Charleston, SC: Nat’l Violence Against Women Prevention Res. Ctr., Med. U. of S.C. 2003), https://phpa.health.maryland.gov/ohpetup/docs/Rape_in_Maryland.pdf.

¹⁸⁴ *Id.*

¹⁸⁵ Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics 2000 Table 3.17*, U.S. DEP’T OF JUSTICE 196 (2001) (Kathleen Maguire & Ann Pastore eds.).

¹⁸⁶ Pollet, *supra* note 119, at 40-41; Imperial, *supra* note 119, at 10.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

this abuse.¹⁸⁹ These safeguards could include using imminence and necessity as factors for the jury to consider,¹⁹⁰ having a failure to retreat instead if the jury determines under all circumstances the act was not truly in self-defense,¹⁹¹ or making a bright-line rule for what constitutes a threat by employing a lethal weapon requirement.¹⁹² Employing one of these safeguards in a stand your ground law will protect the policy concerns of the Maryland legislature while still protecting innocent victims. This will ultimately lead to a public policy that protects the innocent while discouraging abuse of self-defense as a defense.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Cooper v. United States*, 512 A.2d 1002, 1004-05 (D.C. 1986).

¹⁹² 18 PA. STAT. AND CONS. STAT. ANN § 505(b)(2.3) (West 2016).