

**Testimony on House Bill 796**  
House Civil Justice Committee  
December 15, 2020

Submitted by:  
Lisa Voigt

Chair Hambley, Vice Chair Patton, Ranking Member Brown, and members of the committee, thank you for allowing me to submit this testimony on House Sub Bill 796. The circulation of this amended Sub bill following last week’s hearing on SB 796 demonstrates that much more discussion is warranted and that no version of this bill should be rushed through in the waning days of this session, in a pandemic when most witnesses do not wish to testify at the statehouse, as I did on Dec. 3.

I hope the committee will take into account that in multiple hearings on various Stand Your Ground/No Duty to Retreat bills in this General Assembly (HB 381, HB 796, and SB 383), 283 Ohio citizens and groups have submitted opposition testimony, while only 22 have submitted testimony in favor. Furthermore, all of the testimony submitted in support of the bill fails to acknowledge the most important fact, the one you must take into account when considering this bill: the duty to retreat only applies when there is a safe and reasonable means to do so. Thus, there is no reason to eliminate this duty, because we all share the goal to preserve life when it is safe to do so. As Attorney Doug Rogers writes in his testimony against SB 383, “The Ohio Supreme Court held over one hundred years ago there was no duty to retreat when an individual was being assaulted and his life was in imminent danger. *Erwin v. State of Ohio*, 29 Ohio St. 186 (1876).” Sponsors and proponents of this bill must be asked to show cases where this standard has not been upheld and where the application of the duty to retreat resulted in an unjust court decision for a defendant in a self-defense case. So far, over the last two (or more) years of testimony and discussion of various versions of this bill, no such cases have been presented. The claims made by sponsors and proponents only demonstrate a lack of awareness of current self-defense law, as I described in my original testimony (copied below). In the absence of such evidence, another rationale for the passage of this bill must be provided. I have heard none.

Two amended provisions in the House Sub Bill 796 are cause for additional concern. 2901.09(B) simply requires the allegation of a fear of imminent physical harm (“...if the person’s use of force is alleged to be in self-defense or defense of another, that person also had a reasonable fear of imminent physical harm to the person or to the other person”). Anyone can allege (claim) a fear of imminent physical harm; the person making the allegation must provide some evidence for that allegation, and the standard should continue to be fear of death or great bodily harm, as under current self-defense law in Ohio—otherwise we are truly devaluing human life. Proponents of the bill would agree that killing someone should always be a “last resort,” not to prevent a minor injury (“physical harm”).

I am also concerned with the addition of a pretrial immunity hearing in 2307.601(E)(1), which would afford unwarranted protections to someone who has taken a life that are not available to any other defendant in Ohio. This pretrial hearing would make plaintiffs (i.e. the family of a person injured or killed by a person who used lethal force) prove their case twice—once in the pretrial hearing, and again in the trial itself—with serious potential for re-traumatization. It would handicap the prosecution beyond the ways already outlined in the Ohio Prosecuting Attorneys Association’s testimony, submitted by Louis Tobin.

I urge the committee to not rush to a vote in the remaining days of this session, to allow voices on all sides to be heard and present their arguments and evidence when it is safe to do so in person, and to reject HB 796.

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Testimony submitted for Dec. 3 hearing:

My name is Lisa Voigt and I am a professor at The Ohio State University. I began following Ohio’s gun legislation three years ago, after the passage of the bill in December 2016 permitting universities to allow guns on campus. Although that bill passed, I was relieved that during the more recent “lame duck” session (December 2018), what began as a “Stand Your Ground” bill had that provision removed. I am dismayed to have seen it re-introduced in both the House and Senate this session, and especially to see it pushed at a time when Ohioans and Americans across the country are protesting the deaths of more innocent, unarmed black citizens at the hands of white vigilantes and police officers, including Ahmaud Arbery, whose killers were shielded from arrested because of the Stand Your Ground law in Georgia.<sup>1</sup>

In a hearing on Stand Your Ground in Missouri, where it was enacted in 2017, one of the bill’s sponsors testified that “*instead of having to think in your mind... [Stand Your Ground] allows you to act.*” The quote encapsulates well the dangerous “shoot first” mentality that Stand Your Ground fosters. Right now I am asking you to think carefully *before* acting on this dangerous bill. What I ask you to consider is what the research—as well as specific, real-world examples of what has happened in other states with Stand Your Ground—have shown about the consequences of this policy. I also ask you to re-consider the testimony you have heard (and not heard) in support of this bill, such as whether in fact any evidence—either anecdotal or statistical—was presented of the need or desirability to pass it.

Let me begin with a few incidents showing the dangerous consequences of Stand Your Ground laws in other states, beyond the more recent case of Ahmaud Arbery, which is among the horrific extrajudicial killings of African Americans inspiring the current protests. In Texas, a man caused a car collision, yelled “Go back to Islam” to the couple in the other car, and then shot

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<sup>1</sup> Ross J. Arbery case exemplifies abuse of 'stand your ground,' but the damage is broad and systemic. *NBC News*. May 26, 2020. <https://www.nbcnews.com/news/nbcblk/arbery-case-exemplifies-abuse-stand-your-ground-damage-broad-systemic-n1212816>

one of them when he stepped out of that car; the jury declined to indict the shooter for murder after he invoked Stand Your Ground.<sup>2</sup> Another driver, in Arizona, shot a mentally disabled pedestrian who had caused the driver to brake abruptly. The pedestrian had yelled obscenities but had no weapon.<sup>3</sup> In Tallahassee, a man was accused of battery six times before he was arrested for a shootout that left one person dead. After the shooter invoked Stand Your Ground, prosecutors dropped the murder charges.<sup>4</sup> And in Florida, where the shooting death of Trayvon Martin first brought Stand Your Ground to national attention, a dispute over a parking space led to the shooting of an unarmed black man who was backing away from the confrontation, as seen in video footage. That shooter was not charged because of the Stand Your Ground law.<sup>5</sup>

These were all unnecessary escalations of confrontations that led tragically to someone's death. All of these shooters could have safely walked or driven away from the confrontation. But because of Stand Your Ground laws, many will never face consequences for having needlessly taken someone's life. Statistical evidence confirms that these are not isolated incidents. A 2017 study estimates that 30 people nationwide are killed each month as a result of Stand Your Ground laws.<sup>6</sup> A shocking 79 percent of Florida Stand Your Ground claims are like the ones I have listed: the person who claimed Stand Your Ground could have retreated to avoid the confrontation.<sup>7</sup> And in 68 percent of cases, the person killed in the dispute was unarmed—challenging the idea that in all of those cases the shooter had any reason at all to fear for their lives.<sup>8</sup> Research also shows that Stand Your Ground laws have a disproportionate effect on people of color, because there are stark racial disparities between when a homicide is ruled to be justifiable depending on whether the victim is a minority or white.<sup>9</sup> In sum, multiple studies have confirmed that Stand Your Ground laws have *increased*, not decreased, levels of homicide and firearm injury—indeed, according to the RAND corporation's review of all studies, the evidence that Stand Your Ground laws increase homicides, while doing nothing to prevent violent crime or promote legitimate acts of self-defense, is among the strongest evidence available for the impact of gun laws on gun violence.<sup>10</sup> As an academic, I know that it is

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<sup>2</sup> Caldwell L. 'Go back to Islam.' *Texas Observer*. January 4, 2016. <http://bit.ly/2PHpvpR>.

<sup>3</sup> Bello M. Stand-your-ground law looms large in Phoenix shooting. *USA Today*. May 31, 2012. <http://bit.ly/38Adv1L>.

<sup>4</sup> Stanley K, Humburg C. Many killers who go free with 'stand your ground' law have a history of violence. *Tampa Bay Times*. February 17, 2013. <https://bit.ly/2LhL51v>.

<sup>5</sup> *Ibid*.

<sup>6</sup> McClellan C, Tekin E. Stand Your Ground laws, homicides, and injuries. *Journal of Human Resources*. 2017; 52(3): 621-653.

<sup>7</sup> Spitzer RJ. Stand your ground makes no sense. *New York Times*. May 4, 2015. <https://nyti.ms/2CcMW4y>.

<sup>8</sup> Spitzer RJ. Stand your ground makes no sense. *New York Times*. May 4, 2015. <https://nyti.ms/2CcMW4y>.

<sup>9</sup> Roman J. Race, justifiable homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report data. Urban Institute. 2013.

<sup>10</sup> A 2012 study showed that in the 21 states that passed Stand Your Ground laws between 2000 and 2010, there was no evidence that crime was deterred, and homicides increased by 8% (<http://www.nber.org/papers/w18134.pdf>). In Florida, after the passage of Stand Your Ground in 2005, homicides by firearm jumped by 31.6% (<https://crimeresearch.org/wp-content/uploads/2016/11/loi160090.pdf>). For the RAND corporations' review, see <http://bit.ly/2EdVAA9>.

research, not fear-mongering about hypothetical situations, that best serves to guide our search for solutions to problems—and few problems are crying out for solutions more than the epidemic of gun violence that kills 100 Americans every day, far higher than any other comparable country and 10 times higher than what you would expect based on its socioeconomic status.<sup>11</sup> Although I believe we continue to need more research on the causes of gun violence, we have no excuse not to think about and learn from the research that exists.

I hope these examples and statistics also help you to think about what you heard and didn't hear during proponent testimony on various versions of Stand Your Ground during this General Assembly. What I did not hear or see in any of that testimony was a single example where the "duty to retreat" caused a death, where its elimination (in a state with Stand Your Ground) saved a life, or where someone was wrongly prosecuted for shooting someone in self-defense—let alone a study showing that Stand Your Ground laws have had cumulative effects in reducing or deterring gun violence (as I've explained, that is not surprising since all the studies show the opposite). And for many of the people I heard testify in favor of this bill, I have good news: according to *current* law, you can defend yourself with deadly force in the situations you described. If your gender or disability or age render you unable to retreat, or if you are in an alley with no outlet when someone is attacking you, *you can defend yourself* under current law. Current self-defense law *does not* require that a person retreat from a situation if doing so would put them in danger. It only requires that a person avoid killing another person if there is a clear and safe way to do so. I think we would all agree that it's a good idea to avoid killing other people *if there is a clear and safe way to do so*. As one of the last proponent witnesses argued in her testimony, "avoid" and "escape" are clearly the best and should continue to be the first choices, saving the shooting of another person for the absolute last resort. I hope that proponents of this bill will be relieved to learn that they already enjoy under current law the protections they are seeking. As Rick Johnson, a Kansas City defense attorney, explained in a blog about the first "stand your ground" shooting in Missouri after the law was passed there in 2017:

Prior to implementation of Stand Your Ground, despite public perception, there was no such thing as [an absolute] duty to retreat. The phrase itself makes it sound as though a person under assault must first find an escape route prior to fighting back. *That was never the case*. Rather, the use of force must have been reasonably necessary, and if a situation did not allow for a safe escape, *force was always justified even without Stand Your Ground laws*. The law did not require a person to make a run for it before using force if the escape attempt was unreasonable, and this misconception has in part fueled the public's desire for these types of laws.<sup>12</sup>

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<sup>11</sup>Aizenman N, Silver M. How the U.S. compares with other countries in deaths from gun violence. *NPR*. August 5, 2019. <https://n.pr/36wigf3>.

<sup>12</sup> This shooting, over a stolen cell phone, took place 23 days after the law was enacted. Missouri's law does not allow residents to use lethal force to protect property, but the shooter cited the law in his probable-cause statement: "The only reason I thought it was OK to shoot at him while he was running away was because of what happened with the [...] gun law change." The shooter, a college student, now faces felony charges of first-degree assault and armed criminal action; in his case, ironically, the passage of Stand Your Ground could effectively deprive him of ever defending himself with a firearm in the future. As Johnson explained in the blog he posted in

Please do not let this misconception similarly drive your consideration of this bill. What should drive your consideration instead, and ultimately your decision to reject this bill, is the massive public outcry over the killing of unarmed black men and women—mostly through guns, and in part fueled by Stand Your Ground laws in other states—as well as the public outcry over the last year since the Dayton mass shooting for this legislature to #DoSomething about gun violence. For the safety of all Ohioans, I urge you to reject HB 796.

Respectfully submitted,



Lisa Voigt

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the hopes of helping clients avoid this shooter’s mistake, the law “may convince someone to ‘stand their ground’ simply so they can get in a fight that is otherwise avoidable,” leading to serious physical as well as legal risks for the gun owner.” Johnson R. Stand Your Ground: Understanding one of Missouri’s complex use of force rules. June 20, 2017. <https://defenselawkc.com/blog/2017/6/20/stand-your-ground-understanding-one-of-missouris-complex-use-of-force-rules>. See also Evans C. The first ‘Stand Your Ground’ shooting in Missouri was over a stolen cell phone. *The Trace*. May 15, 2017. <http://bit.ly/2rJXj0>.