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January 30, 2015

Representative Charles "Chuck" Kleckley  
Speaker of the House of Representatives  
P.O. Box 94062  
Baton Rouge, Louisiana 70804-9062

RE: HR 149 of 2014

Dear Mr. Speaker:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature in response to 2014 House Resolution No. 149, relative to Louisiana's "Stand Your Ground" provisions.

Sincerely,

A handwritten signature in blue ink that reads "William E. Crawford".

William E. Crawford  
Director

WEC/puc

Enclosure

cc: Representative Wesley Bishop

email cc: David R. Poynter Legislative Research Library  
[drplibrary@legis.la.us](mailto:drplibrary@legis.la.us)  
Secretary of State, Mr. Tom Schedler  
[admin@sos.louisiana.gov](mailto:admin@sos.louisiana.gov)

**LOUISIANA STATE LAW INSTITUTE**

**CRIMINAL CODE AND CODE OF  
CRIMINAL PROCEDURE REVISION COMMITTEE**

**Report to the Louisiana Legislature  
In Response to HR 149 of the 2014 Regular Session  
Relative to Louisiana's "Stand Your Ground" Provisions**

Prepared for the Louisiana Legislature

**January 30, 2015**  
Baton Rouge, LA

Frank Foil, Co-Chair  
Robert Morrison, III, Co-Chair  
Cheney C. Joseph, Jr., Reporter  
Joseph J. Baiamonte, Staff Attorney

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CRIMINAL CODE AND CODE OF CRIMINAL PROCEDURE

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\* \* \* \* \*

Judge Frank Foil, Co-Chair

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Joseph J. Baiamonte, Staff Attorney

January 30, 2015

**To: Representative Charles "Chuck" Kleckley  
Speaker of the House of Representatives  
P.O. Box 94062  
Baton Rouge, LA 70804-9602**

**From: Cheney C. Joseph, Jr., Reporter  
Code of Criminal Procedure Revision Committee of the Louisiana  
State Law Institute**

**Report to the Louisiana Legislature  
In Response to HR 149 of the 2014 Regular Session  
Relative to Louisiana's "Stand Your Ground" Provisions**

House Resolution No. 149 of the 2014 Regular Session requested the Louisiana State Law Institute to evaluate the provisions of Louisiana law regarding "stand your ground" provisions, "as well as the provisions of law from other states", and to "make any recommendations regarding any changes to those laws which may result from that evaluation". The Law Institute's Code of Criminal Procedure Revision Committee was assigned the responsibility to respond to the resolution and to report that response to the Law Institute's Council.

The Committee's Reporter, Cheney C. Joseph, Jr., presented a preliminary report to the Law Institute's Council during its October 2014 meeting. A copy of that report is included, and a copy of HR 149 is a part of the report.

In the report, the Reporter traces the history of Louisiana's relevant statutory provisions beginning with the 1941 Projet of the Criminal Code. The report reviews statutes in other states and notes that the current national trend reflects approval of "stand your ground" provisions. Additionally the report observes that HB 826 of 2014 proposed repeal of Louisiana's "stand your ground" provisions. The legislature declined

to pass that bill but elected to pass Acts 2014, No. 163 amending the state's "stand your ground" provisions.

The report also discusses the concept that could form the basis for legislation and analyzes the issues that legislation could raise. It concludes with the Reporter's stating the crux of the decision for the Code of Criminal Procedure Revision Committee:

"Should the possibility of safe retreat to avoid the necessity of killing or using force to repel an assailant without killing be a factor for a jury (the usual fact finder) to consider in determining the reasonableness of the defendant's determination of the apparent necessity of using force or of killing - or should Louisiana continue to provide a "no retreat" rule and to bar consideration of the prospects of safe retreat in our justification provisions?"

The Council thoroughly discussed the report and in light of the legislature's failure to pass HB 826, its passage of Act 163, and the current national trend cited in the report, it elected to report that it declines at this time to propose repeal of Louisiana's "stand your ground" law provisions. The Law Institute recommends retention of the state's current law at this time and does not propose other legislation.

Respectfully Submitted:  
Cheney C. Joseph, Jr., Reporter  
Code of Criminal Procedure Revision Committee  
Louisiana State Law Institute

**LOUISIANA STATE LAW INSTITUTE**

**CRIMINAL CODE AND CODE OF  
CRIMINAL PROCEDURE REVISION COMMITTEE**

**PRELIMINARY REPORT TO THE COUNCIL  
IN RESPONSE TO HR 149 OF 2014**

**(REVIEW OF "STAND YOUR GROUND LAWS")**

**Prepared for the Meeting  
of the Council  
October 10-11, 2014  
New Orleans**

**Frank Foil, Co-Chair  
Robert Morrison, III, Co-Chair  
Cheney C. Joseph, Jr.  
Reporter  
Joseph J. Baiamonte  
Staff Attorney**

**9-26-14**

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\* \* \* \* \*

Judge Frank Foil, Co-Chair

Judge Robert Morrison, III, Co-Chair

Cheney C. Joseph, Jr., Reporter

Joseph J. Baiamonte, Staff Attorney

1 HR 149 of 2014 Preliminary Report To The Council

2  
3 The Reporter presents this preliminary report for the Council's information and  
4 guidance.

5  
6 HB 826 was introduced during the 2014 Regular Session. It proposed to amend  
7 R.S. 14:19 and 20 to delete the "stand your ground" provisions. The bill was not  
8 adopted and in its place the "study resolution", HR 149 of 2014, was adopted to "urge  
9 and request" the Law Institute to "evaluate Louisiana's 'stand your ground' laws,  
10 compare them to the laws of other states, and make recommendations regarding any  
11 changes to Louisiana law resulting from that evaluation." The resolution, as initially filed,  
12 "directed" the law institute to conduct the study – and was amended to "urge and  
13 request". It does not contain a "report by" date. A copy of HR 149 is attached.

14  
15 In addition to electing not to pass HB 826, the legislature enacted Acts 2014, No.  
16 163 that amended R. S. 14:19 and 20.

17  
18 Articles 19 and 20 (R.S. 14:19 and 20) deal with the right to use force in self-  
19 defense in non-homicide and homicide cases. Louisiana law has , since the adoption of  
20 the 1942 Criminal Code, distinguished the "self-defense provision" based on the result  
21 (i.e., homicide or non-homicide) rather than on the nature of the force used (deadly  
22 force or non-deadly force).

23  
24 The provisions of R.S. 14:19(C) specifically provide that "a person who is not  
25 engaged in unlawful activity and who is in a place where he or she has a right to be  
26 shall have no duty to retreat before using force or violence as provided in this Section  
27 and may stand his or her ground and meet force with force." Paragraph D is directed to  
28 jury instructions and argument of counsel and specifically provides that "no finder of fact  
29 shall be permitted to consider the possibility of retreat as a factor in determining whether  
30 or not the person who used force or violence in defense of his person or property had a  
31 reasonable belief that force or violence was reasonable and apparently necessary to  
32 prevent a forcible offense or to prevent the unlawful entry."

33  
34 Similarly, the provisions of R.S. 14:20(C) provide that "a person who is not  
35 engaged in unlawful activity and who is in a place where he or she has a right to be  
36 shall have no duty to retreat before using deadly force as provided in this Section and  
37 may stand his or her ground and meet force with force." Paragraph D is directed to jury  
38 instructions and argument of counsel and specifically provides that "no finder of fact  
39 shall be permitted to consider the possibility of retreat as a factor in determining whether  
40 or not the person who used deadly force had a reasonable belief that deadly force was  
41 reasonable and apparently necessary to prevent a violent of forcible felony involving  
42 death or great bodily harm or to prevent the unlawful entry."

43  
44 Section 19 refers to the use of force or violence and Section 20 refers to the use  
45 of "deadly force".  
46



1           These stand your ground provisions of Louisiana law are consistent with the laws  
2 of many other states. The “Castle Doctrine”, a long standing jurisprudential doctrine,  
3 provides that a person need not retreat to avoid a confrontation when the person is in  
4 his or her own home. A 2014 ABA Preliminary Report of a National Task Force on  
5 Stand Your Ground Laws reveals that 33 states have such stand your ground-type  
6 provisions, and 17 states continue to provide that retreat is a factor in determining the  
7 reasonableness of the use of force. The ABA report and the National Commissioners  
8 reports, and a report of the Law Institute research staff, reflect the current trend toward  
9 the approval of ‘stand your ground’ provisions. The reports also reflect a growing  
10 concern that the provision is applied in an uneven fashion and does not advance the  
11 cause of peace and safety in the community.

12  
13           The Reporters for the Louisiana Criminal Code were well aware of the debate  
14 regarding the “duty to retreat” in cases of self-defense. The provisions of current R.S.  
15 14:20(A) and (B) dealing with “justifiable homicide” are identical to the language of the  
16 December, 1941 Project of the Criminal Code. Similarly, the provisions of current R.S.  
17 14:19(A) are identical to the language of the December, 1941 Project of the Criminal  
18 Code. The Reporters’ comments for Article 20 noted the following:

19  
20                   "American cases present several divergent views upon the  
21 question of the necessity of retreating from an assailant in order to  
22 justify a slaying in self-defense. There is some doubt as to what is  
23 the prevailing doctrine. Louisiana has generally recognized a duty  
24 to retreat, but with many qualifications. In this article it was thought  
25 best not to express any definite rule as to retreat. The article simply  
26 requires that in order for the homicide to be justifiable, a person  
27 who kills another must have a reasonable belief that the killing is  
28 necessary. The possibility of avoiding the necessity of taking  
29 human life, by retreat, is only one of many factors that the jury  
30 should consider in determining whether the defendant has a  
31 reasonable belief that the killing was necessary. Justice Holmes  
32 expressed a similar opinion in *Brown v. United States*, 256 U.S.  
33 335 (1921) : 'Rationally the failure to retreat is a circumstance to be  
34 considered with all the others in order to determine whether the  
35 defendant went farther than he was justified in doing; not a  
36 categorical proof of guilt.' Some of the other factors that should be  
37 considered in determining whether the party attacked has a  
38 reasonable belief that it was necessary to kill are the excitement  
39 and confusion of the occasion, the possibility of avoiding the  
40 necessity of the killing by using force or violence less than killing,  
41 and the party’s knowledge of the assailant’s bad character. If  
42 specific rules as to retreat were given, there would probably be a  
43 tendency to judge the reasonableness of a person’s belief in the  
44 necessity of killing by that test alone."

1           The added justification defenses in R.S. 14:19 and 20 were not based on  
2 recommendations by the Law Institute and the initial work of the Institute in proposing  
3 the Criminal Code is consistent with the “spirit” of HB 826. However, in view of the  
4 current studies being conducted by the ABA Task Force and the National Conference of  
5 State Legislatures, including the failure of HB 826 to achieve passage, the Reporter  
6 does not suggest that an amendment to delete the “stand your ground” provisions is  
7 appropriate at this time. If the Council determines that the original position of the  
8 Reporters, the Advisors, and the Council in the submission of the Criminal Code of 1942  
9 was the correct view, that is certainly an appropriate recommendation to the Legislature  
10 to consider its initial view. Alternatively, the Council can direct the Advisory Committee  
11 to conduct further study.  
12

13           The question is, in many respects, quite simply: Should the possibility of safe  
14 retreat to avoid the necessity of killing or using force to repel an assailant without killing  
15 be a factor for a jury (the usual fact finder) to consider in determining the  
16 reasonableness of the defendant’s determination of the apparent necessity of using  
17 force or of killing - or should Louisiana continue to provide a “no retreat” rule and to bar  
18 consideration of the prospects of safe retreat in our justification provisions?

Regular Session, 2014

HOUSE RESOLUTION NO. 149

BY REPRESENTATIVE WESLEY BISHOP

A RESOLUTION

To urge and request the Louisiana State Law Institute to evaluate Louisiana's "stand your ground" laws, compare them to the laws of other states on this issue, and make recommendations regarding any changes to Louisiana law resulting from that evaluation.

WHEREAS, the common law principle of the "castle doctrine" means that individuals have the right to use reasonable force, including deadly force, to protect themselves against an intruder in their home; and

WHEREAS, this principle has been codified and expanded by state legislatures; and

WHEREAS, laws in at least twenty-two states provide that there is no duty to retreat an attacker in any place in which one is lawfully present; and

WHEREAS, for over one hundred years, Louisiana law has provided that the use of force or the commission of a homicide is justified if it is committed in self-defense or is committed to prevent a homicide or violent offense committed against another person; and

WHEREAS, Act No. 141 of the 2006 Regular Session of the Legislature introduced a new concept into Louisiana law by enacting R.S. 14:19(C) and 20(C), known as Louisiana's "stand your ground law" which provides that, "[a] person who is not engaged in unlawful activity and who is in a place where he or she has a right to be shall have no duty to retreat before using [deadly force, force, or violence] and may stand his or her ground and meet force with force."; and

WHEREAS, it is appropriate that the laws regarding "stand your ground" be reviewed in comparison to the laws of other states and with respect to court decisions interpreting those laws.

THEREFORE, BE IT RESOLVED that the House of Representatives of the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to evaluate the provisions of Louisiana law regarding "stand your ground" provisions, as well as the provisions of law from other states regarding this issue, and make any recommendations regarding any changes to those laws which may result from that evaluation.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES