

Pennsylvania's Expanded Castle Doctrine: An Annotated Tour Of The First Five Years

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ABSTRACT

After several attempts over several years, in 2011, Pennsylvania altered its self-defense laws, expanding the Commonwealth's existing castle doctrine. The changes removed crime victims' duty to retreat under certain circumstances, changed certain evidentiary standards related to the use of force, and narrowed the rights of violent attackers to bring civil suits. The changes were hotly opposed by traditional anti-gun constituencies who argued volubly and extensively that the changes would increase violence across the Commonwealth. Data gathered in the wake of the changes show that no such wave of violence emerged and that, in fact, violent crime dropped after the expansion of Pennsylvania's castle doctrine.

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I. CHANGE IN THE LAW

In 2011, Pennsylvania strengthened its self-defense laws through an expansion of its castle doctrine.³ Prior to the 2011 changes, victims who acted in self-defense were burdened with a duty to retreat before defending themselves outside their homes, burdened with a duty to demonstrate in court that they reasonably believed their use of force was necessary, and burdened with potential civil liability and legal expenses in a civil action brought by or on behalf of their attacker. The 2011 amendments: (1) eliminated the duty to retreat through a “stand your ground” provision, (2) created an evidentiary presumption that a victim acted reasonably in defending herself, and (3) provided civil immunity for victims who acted in self-defense.

These amendments were met with great controversy at the time, but in the first six years after their enactment, the amendments have worked precisely as intended. Data collected by the Commonwealth show that these expanded self-defense rights have not emboldened assailants nor encouraged violence. Instead, since the changes, violent crimes and murders have decreased. Nor have the changes served as some sort of “get out of jail free” card for would-be criminals. Indeed, the murder conviction rate has remained consistent, and justified homicides in which a criminal attacked a civilian have decreased. Further, the amendments have coincided with a substantial decrease in burglaries, while effectively easing the legal burdens on victims of deadly attacks.

[I]t is proper for law-abiding people to protect themselves, their families and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves or others.

Part I of this article explains how the 2011 amendments altered Pennsylvania's self-defense laws. Part II covers the debate between opponents and proponents of the legislation before it became law. Part III examines relevant crime statistics since the law's enactment. Part IV explores how concealed carry permit holders responded to the changed law. Part V describes how the law has impacted the state's judicial system. Part VI details how victims have benefited from the law. And Part VII concludes this article by evaluating the overall impact of the amendments.

The law created a presumption that an actor reasonably believes:

that deadly force is immediately necessary to protect himself against death, serious bodily injury, kidnapping or sexual intercourse compelled by force or threat if both of the following conditions exist:

- (i) The person against whom the force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcefully entered and is present within, a dwelling, residence or occupied vehicle; or the person against whom the force is used is or is attempting to unlawfully and forcefully remove another against that other's will from the dwelling, residence or occupied vehicle.
- (ii) The actor knows or has reason to believe that the unlawful and forceful entry or act is occurring or has occurred.⁴

The law provides several exceptions, however. The newly enacted presumption does not apply if the person against whom force is used:“(i). . . has the right to be in or

3. Act of June 28, 2011 (P.L. 48, No.10), effective Aug. 29, 2011.

4. 18 Pa.C.S. §505(b)(2.1) (2015).

is a lawful resident of the dwelling, residence or vehicle. . . . (ii). . . . is a child or grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the protective force is used; [or]. . . . (iv). . . . is a peace officer acting in the performance of his official duties.”⁵ Nor does the presumption apply if “the actor is engaged in a criminal activity or is using the dwelling, residence or occupied vehicle to further a criminal activity.”⁶

The law defines a “residence” as “a dwelling in which a person resides, either temporarily or permanently, or visits as an invited guest.”⁷ And it expanded the definition of “dwelling” to include “any attached porch, deck or patio.”⁸

Most controversially, the law added a “stand your ground” provision to Pennsylvania’s castle doctrine:

An actor who is not engaged in a criminal activity, who is not in illegal possession of a firearm and who is attacked in any place where the actor would have a duty to retreat under paragraph (2)(ii) has no duty to retreat and has the right to stand his ground and use force, including deadly force, if:

- (i) the actor has a right to be in the place where he was attacked;
- (ii) the actor believes it is immediately necessary to do so to protect himself against death, serious bodily injury, kidnapping or sexual intercourse by force or threat; and
- (iii) the person against whom the force is used displays or otherwise uses:
 - (A) a firearm or replica of a firearm as defined in 42 Pa.C.S. §9712 (relating to sentences for offenses committed with firearms); or
 - (B) any other weapon readily or apparently capable of lethal use.⁹

Additionally, the law protects an actor using force to defend himself, another person, or property by making him “immune from civil liability for personal injuries sustained by a perpetrator which were caused by the acts or omissions of the actor as a result of the use of force.”¹⁰ In addition, the perpetrator, or person bringing an action on behalf of the perpetrator, is responsible for any reasonable expenses incurred by the victim as a result of such a civil action.¹¹

Prior to the 2011 amendments, persons in public needing protection against death, serious bodily injury, kidnapping, or compelled sexual intercourse were subject to a duty to retreat (if such retreat could be effected in complete safety) before resorting to the use of deadly force. The 2011 amendments relieve victims of this duty when the attacker uses a lethal weapon and the victim has a right to be where she is and believes deadly force is necessary.

Prior to the 2011 amendments, a victim had no duty to retreat in her own home or vehicle—Pennsylvania codified the castle doctrine in 1972, and even then it only codified long established case law¹²—but some evidence had to be produced that the victim reasonably believed it was necessary to use deadly force because she was in imminent danger of death or serious bodily injury.¹³ The 2011 amendments es-

5. 18 Pa.C.S. §505(b)(2.2) (2015).

6. 18 Pa.C.S. §505(b)(2.2)(iii) (2015).

7. 18 Pa.C.S. §501 (2015).

8. *Id.*

9. 18 Pa.C.S. §505(b)(2.3) (2015).

10. 42 Pa.C.S. §8340.2(a) (2015).

11. 42 Pa.C.S. §8340.2(b) (2015).

12. See *Commonwealth v. Fraser*, 369 Pa. 273, 277 (1952) (stating that the castle doctrine “has always been recognized as the law in this State”).

13. See *Commonwealth v. Childs*, No. 272 EDA 2013, 2014 WL 10788813, at *10 (Pa. Super. Ct. Nov. 10, 2014), *aff’d*, 142 A.3d 823 (Pa. 2016) (“before the passage of the new act, a self-defense claim by an individ-

establish a presumption that a person who uses deadly force in her own home or vehicle acts reasonably in doing so, where the criminal unlawfully and forcefully entered the dwelling or vehicle (or was in the process of doing so).

Perhaps most troubling, prior to 2011, a civil action could be initiated by or on behalf of the attacker against a victim who resorted to self-defense for injuries an attacker sustained in the course of his attack.¹⁴ This created the potential for civil liability for victims and subjected them to costly legal fees. As if being the target of a deadly attack was not enough, a victim could then be bankrupted by the deadly attacker in a civil matter under a preponderance standard, even if the lawful use of self-defense had been criminally exonerated under the reasonable doubt standard.

II. CONTROVERSY

It took several attempts over several years for the castle doctrine expansion to be enacted into law. While the expansion was always popular and had broad bipartisan support, the opposition that did exist was fierce and vocal.

Opposition

Opponents of the castle doctrine expansion argued that the amendments would increase violent crime by emboldening criminals and encouraging violence. They frequently warned that criminals would instigate confrontations and shoot victims once they resisted the initial attack, only to successfully plead a “stand your ground” defense at trial.¹⁵ Anyone who so much as gave another person a wrong look was suddenly in grave danger.

A version of the expansion overwhelmingly passed the House (161-35)¹⁶ and Senate (45-4)¹⁷ with strong support from both parties in 2010, but Governor Ed Rendell vetoed the bill. He expressed “grave concerns” in his veto message that “the bill as passed encourages the use of deadly force . . . and advances a ‘shoot first, ask questions later’ mentality.” Rendell believed that the law would benefit criminals while endangering citizens, “contradict[ing] the very anti-violence agenda [he] worked so hard . . . to achieve.”¹⁹

ual who was in his residence required that some evidence be shown, by either the Commonwealth or the defendant, that the defendant reasonably believed he was in imminent danger of death or serious bodily injury and it was necessary to use deadly force to prevent such harm”).

14. Before the 2011 amendments, nothing prevented an attacker from bringing a civil action against his victim requesting damages for injuries that resulted from the victim’s use of force. The General Assembly declared in the preamble to the 2011 legislation that “[i]t is proper for law-abiding people to protect themselves, their families and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.” Pennsylvania General Assembly: House Bill 40; Session of 2011, *available at* <http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2011&sessInd=0&billBody=H&billTyp=B&billNbr=0040&pn=1038>.

15. *See, e.g.,* Barbara W. Brandom, M.D., *Boon to Criminals*, PITTSBURGH POST-GAZETTE (October 17, 2010), <http://blogs.post-gazette.com/opinion/113-opinion/open-letters/22381-issue-one-the-castle-doctrine> (denouncing the legislation as “a dream come true for the defense attorneys of drug gangs and other heavily armed criminals who, when they kill innocent people, would be absolved of responsibility on the grounds that they, the shooters, claimed to have been threatened”).

16. Pennsylvania House of Representatives, House Bill 1926, Printer’s No. 4477 (2009), http://www.legis.state.pa.us/CFDOCS/Legis/RC/Public/rc_view_action2.cfm?sess_yr=2009&sess_ind=0&rc_body=H&rc_nbr=2023.

17. Pennsylvania State Senate, House Bill 1926, Printer’s No. 4477 (2009), http://www.legis.state.pa.us/CFDOCS/Legis/RC/Public/rc_view_action2.cfm?sess_yr=2009&sess_ind=0&rc_body=S&rc_nbr=675.

18. H.B. 1926–Veto Message, *available at* <http://www.ctbpls.com/www/PA/09R/PDF/PA09RHB01926VET.pdf>.

19. *Id.*

The relatively few lawmakers who voted against the law explained that they did so, in their words, to protect public safety. Senator Larry Farnese called it “dangerous public policy,” which will “allow for a ‘shoot first; ask questions later’ approach to self-defense.”²⁰ Farnese was certain “that the Castle Doctrine expansion will make the streets more dangerous.”²¹ Representative Dan Frankel complained that “it creates almost a wild west mentality.”²²

District Attorneys throughout Pennsylvania consistently opposed the proposed castle doctrine expansions.

The Philadelphia District Attorney’s Association issued a press release in December 2007 warning that an expanded castle doctrine would “increase handgun violence in Pennsylvania by encouraging people with firearms to shoot their victims more quickly.”²³ They provided various reasons it would “produce[] several disastrous consequences making the streets and highways of our state more dangerous than ever.”²⁴ First, by providing “Dodge City protections,” it would take Pennsylvania back to the Old West: “The days of the ‘Wild West’ where two armed gunman [sic] could face off on the street at high noon and the winner would walk away under a claim of self-defense should remain a distant memory of a more barbaric time in this country’s history.”²⁵ Worse yet, it “will protect gang killers from prosecution.”²⁶ “The largest impact of House Bill 641 will be to provide most gang killers in this Commonwealth with a ready-made defense that will be very difficult for the Commonwealth to defeat . . . gang killers will have a potent, often-winning courtroom argument.”²⁷ Another disastrous consequence, they warned, would be “protecting road rage killers from prosecution.”²⁸ It would be “throwing fuel on the fire of deadly road rage.”²⁹ The association ended the press release by concluding that the expansion would “give potent new legal weapons for gang killers and road rage killers to avoid responsibility for the taking of human life” and “will without a doubt make Pennsylvania a more dangerous place for all our citizens.”³⁰

Veteran prosecutor Mark Gilson agreed. He warned that if the duty to retreat were ever removed, “many violent ruthless killers will be permitted to get away with murder.”³¹

Dauphin County District Attorney Ed Marsico explained, “[w]hat we’re worried about is the criminals that are out there on the street engaging in gun play are now going to use this new law as a defense, a way to get out of other charges.”³²

20. *Senator Farnese: Castle Doctrine is Wrong for Pennsylvania*, June 22, 2011, <http://www.senatorfarnese.com/senator-farnese-castle-doctrine-is-wrong-for-pennsylvania>.

21. *Id.*

22. Ed Mahon, *Florida, Pa. ‘Stand Your Ground’ Laws Differ*, TIMES LEADER, April 5, 2012, <http://timesleader.com/archive/428483/stories-yo-florida-pa-stand-your-ground-laws-differ-0405133479>.

23. Larrymeyer, Comment to *Philadelphia District Attorney’s Association: PDAA opposes House Bill*, PAFOA (Dec. 11, 2007, 6:54 PM), <http://forum.pafoa.org/showthread.php?t=12852>.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. WhiteFeather, Comment to *Breaking News DA.s oppose your rights to self defense*, PAFOA (Nov. 19, 2009, 8:03 AM), <http://forum.pafoa.org/showthread.php?t=79389>.

32. See *Castle Doctrine in Effect in Pennsylvania; Columbia (SC) Refused to Pass Curfew Ordinance in March of 2011*, SBPDL (June 29, 2011), <https://sbpdl.wordpress.com/2011/06/29/castle-doctrine-in-effect-in-pennsylvania-columbia-sc-refused-to-pass-curfew-ordinance-in-march-of-2011/>.

The Pennsylvania District Attorneys Association adamantly opposed early versions of the bill.³³ It stayed neutral on the final version that was signed into law, although it maintained that the amendments were unnecessary.³⁴

Many opponents expressed their dismay in newspaper editorials. A particularly incendiary editorial from the Pittsburgh Post-Gazette entitled, "Gun god: The House pays homage by blessing a lethal bill," proclaimed that the amendments "open a can of deadly worms" by creating a "free-fire zone," in which citizens became "judge, jury and executioner."³⁵ The editorial urged the governor to "take a pro-people stand and veto it because empowering itchy trigger fingers is more about encouraging violence than standing up for self-defense."³⁶

The following day, an opinion piece by Jana Finder in the same paper argued that the law "would grant a right to shoot at anyone on the street perceived as a threat. It would give legal protection to those involved in a street shootout, endangering neighbors or those driving through a neighborhood."³⁷ She incredulously asked her readers, "are you comfortable with your state Legislature encouraging the development of war zones in your neighborhood?"³⁸

Another Post-Gazette editorial entitled, "Trigger-Happy: A Gun Bill Seeks to Fix a Law that Isn't Broken," argued that the law "would be an open invitation to needless trouble and it would complicate the lives of police officers . . . all because of the guns-are-supreme mentality pushed by the National Rifle Association (which supports the bill) and others."³⁹

A USA Today editorial argued that Pennsylvania was joining a "craze of states" advancing a pro-gun "agenda that ranges from radical to idiotic," and that the legislation was part of a "systematic campaign for a doctrine of guns anywhere, anytime and in the hands of just about anyone, without consequence for irresponsible actions."⁴⁰

A Times-Tribune editorial celebrated Governor Rendell's veto of the castle doctrine expansion because "it would have promoted gun violence and diminished public safety."⁴¹

Perhaps the most vocal critics came from CeaseFire PA, a gun control advocacy group, which collected over 4,000 petitions urging a gubernatorial veto. For instance, then-executive director Max Nacheman called the amendments "a dangerous, pro-violence measure."⁴² Another executive director, Joe Grace, called the amendments

33. PA District Attorneys Issue Statement on Governor's Veto of H.B. 192 [sic], Pennsylvania District Attorney's Association (Nov. 29, 2010), <http://www.pdaa.org/pa-district-attorneys-issue-statement-on-governors-veto-of-h-b-192/>.

34. Ann Marie Awad, *Like Florida, Pa. has 'stand your ground' law*, Newsworks (July 15, 2013), <http://www.newsworks.org/index.php/local/politics/57331-like-florida-pa-has-stand-your-ground-law>.

35. *Gun god: The House pays homage by blessing a lethal bill*, Pittsburgh Post-Gazette (Oct. 10, 2010), <http://www.post-gazette.com/opinion/editorials/2010/10/11/Gun-god-The-House-pays-homage-by-blessing-a-lethal-bill/stories/pgc.post-gazette.com>.

36. *Id.*

37. Jana Finder, *We already can defend ourselves: There's no need for an expanded right to shoot people*, Pittsburgh Post-Gazette (Oct. 11, 2010), <http://www.post-gazette.com/opinion/Op-Ed/2010/10/12/We-already-can-defend-ourselves-There-s-no-need-for-an-expanded-right-to-shoot-people/stories/2010101201771>.

38. *Id.*

39. *Trigger-Happy: A Gun Bill Seeks to Fix a Law that Isn't Broken*, Pittsburgh Post-Gazette (Nov. 29, 2009), at B2.

40. James Gibbard, *Our view: Gun laws are taking a radical turn*, USA Today (Apr. 24, 2011), https://usatoday30.usatoday.com/news/usaedition/2011-04-25-OurView-on-guns_ST_U.htm.

41. *Three vetoes should stick*, The Times-Tribune (Nov. 30, 2010), <http://thetimes-tribune.com/opinion/three-vetoes-should-stick-1.1070496>.

42. Kari Andren, *Pennsylvania castle doctrine opponents worry expanded self-defense rights could lead to violence*, Penn Live (Apr. 16, 2011), http://www.pennlive.com/midstate/index.ssf/2011/04/pennsylvania_castle_doctrine_o.html.

“gun lobby ‘feel-good’ reform” that “perpetuates the myth that having more guns makes you safer.”⁴³ CeaseFire’s most questionable tactic came in an email to its followers, which drew similarities between the law’s lead sponsor, Representative Scott Perry, and the Tucson, Arizona, mass-shooter, Jared Loughner. The email concluded by encouraging readers to “[s]end a message to legislators like Representative Perry that it is never appropriate to use guns against the people who serve in our state and federal governments.”⁴⁴

Another gun-control advocacy organization, Heeding God’s Call, stated that “our name for [the law] is Judge, Jury and Executioner.”⁴⁵ The group’s co-founder, Bryan Miller, testified against the law in the General Assembly.⁴⁶

Proponents

Despite how vocal its opponents were, the legislation was very popular among citizens and lawmakers from both parties.

Representative Perry provided various reasons why he sponsored the House bill: “Right now, citizens have to spend precious moments and precious seconds . . . determining, is there time to run to the next room, the next building, around the car . . . that’s not a decision we want our citizens having to analyze at that critical moment where it might be the difference between life and death.”⁴⁷ Another time, Perry argued: “Why should you have a duty to retreat when someone is coming at you with a weapon? Why can you only defend yourself in your home? Are you more valuable in your home than out of it?”⁴⁸ And later, “a criminal should never have an advantage over a citizen who abides by the rules of decent society, and [by passing the law], we finally achieved the goal of returning the right of self-defense to the law-abiding.”⁴⁹

Co-sponsor Representative Daryl Metcalfe echoed that sentiment, arguing that the law restored “the common-sense right of a citizen” to defend himself without having to worry about legal consequences.⁵⁰

Representative John Pallone, one of the many Democrats who supported the bill, praised it for “mak[ing] it clearer I can protect my family, my home or myself.”⁵¹

Senator Richard Alloway, who sponsored the companion bill in the Senate (which passed 43-4), said that “[l]aw-abiding gun owners should not have to fear prosecution for acting to prevent a violent crime.”⁵²

The National Rifle Association was a strong supporter of the law and lobbied hard for its passage. NRA Executive Director Chris Cox praised its enactment, explaining

43. Brad Bumsted, *Pennsylvania self-defense bill appears dead*, TribLive (July 3, 2010), http://triblive.com/x/pittsburghtrib/news/regional/s_688820.html.

44. See IronSight, *Comment to CeasefirePA compares Rep. Perry to Jared Loughner*, PAFOA (June 13, 2011, 4:07 AM), <http://forum.pafoa.org/showthread.php?t=138785>.

45. Stu Bykofsky, *Your home, your castle . . . so why hesitate shooting an intruder? Good question*, Philly.com (Nov. 19, 2009), http://www.philly.com/philly/news/pennsylvania/20091119_Stu_Bykofsky_Your_home_your_castle__so_why_hesitate_shooting_an_intruder_Good_question_.html.

46. *Id.*

47. Andren, *supra* note 42.

48. Bumsted, *supra* note 43.

49. *Pennsylvania Governor Signs NRA-Backed Castle Doctrine into Law*, NRA-ILA (June 28, 2011), <https://www.nra.org/articles/20110628/pennsylvania-governor-signs-nra-backed>.

50. IronSight, *supra* note 44 (“Your home, your castle . . . so why hesitate shooting an intruder? Good question”).

51. Brad Bumsted, *House to vote on ‘stand your ground’ gun bill today*, TribLive (Oct. 4, 2010), http://triblive.com/x/pittsburghtrib/news/regional/s_702590.html.

52. *Pennsylvania Governor Signs NRA-Backed Castle Doctrine into Law*, *supra* note 49.

that “crime victims don’t have the luxury of time when confronted by a criminal and must be able to count on the law being on their side.” Cox declared that “this new law accomplishes that by removing any mandate of forcible retreat.”⁵³

Another gun rights group, the Unified Sportsmen of Pennsylvania, also supported the amendments. Its president, Stephen Mohr, suggested that “maybe the criminal will think twice now, knowing their victim doesn’t have to attempt to retreat or attempt to avoid a confrontation.”⁵⁴

Campaign Issue

After Governor Rendell vetoed the castle doctrine expansion bill, it became a major campaign issue. Then-Republican gubernatorial candidate Tom Corbett said, “I would sign it,” while his opponent, Democrat Dan Onorato, said, “I would veto it.”⁵⁵ Corbett was elected, and months later he made good on his word, signing the castle doctrine expansion into law on June 28, 2011.

National “Stand Your Ground” Controversy

A nationwide debate over “stand your ground” laws ensued after the shooting of Trayvon Martin in February 2012. The debate often focused on Pennsylvania’s law, which was among the newest in the nation at the time. Critics were undeterred by the fact that Florida’s “stand your ground” provision was unrelated to the shooting and was not even raised by George Zimmerman’s defense team at trial.

Trying to build off the anti-“stand your ground” momentum, Philadelphia’s City Council approved a resolution urging state legislatures to repeal the 2011 amendments. The resolution’s co-sponsor Curtis Jones complained that the law encourages violence, and that it had actually caused violence in Philadelphia. Jones said, “[it] gives people who have ill intentions a reason to shoot. It becomes a ‘Wild Wild West’ mentality. We have to send a signal to Harrisburg, and to those people, because we see the effects of it here. We need to send a signal to let people know it’s time to ceasefire.”⁵⁶ Councilman Dennis O’Brien claimed people would be getting away with murder, because “every bad guy would just say ‘I was in fear for my life.’”⁵⁷

Despite critics’ best efforts, the expanded castle doctrine has now stood for six years. An analysis of its impact on crimes, courts, and victims convincingly demonstrates that the law has been a success.

III. IMPACT ON CRIME

The obvious first place to look to evaluate the law’s impact is the violent crime rate. This is where critics predicted the 2011 amendments would have the greatest detrimental impact. They said, in effect, that average citizens would place themselves in danger just by leaving the house, that Pennsylvania would turn into the

53. *Id.*

54. Andren, *supra* note 42.

55. Jan Murphy, *Pennsylvania governor’s race: Where Corbett, Onorato stand on everyday issues*, PennLive (Oct. 27, 2010), http://www.pennlive.com/midstate/index.ssf/2010/10/pennsylvania_governors_race_wh.html.

56. Brian Hickey, *Trayvon case the focus as Philadelphia City Council urges state to repeal ‘Castle Doctrine’ expansion*, Newsworks (Apr. 19, 2012), <http://www.newsworks.org/index.php/local/germantown-weekly-newsletter/37215-city-council-resolution-urges-state-legislators-to-repeal-castle-doctrine-expansion>.

57. *Id.*

“wild west,” that “gang killers” would kill with impunity, and that “road rage killers” would have a “get out of jail free” card.⁵⁸

Since the law took effect on August 27, 2011, the most accurate analysis of its impact requires that data from 2011 be omitted. And since 2015 is the most recent year for which statistics have been released by Pennsylvania’s Uniform Crime Reporting System (“UCRS”), it makes sense to compare 2007-2010 with 2012-2015 when evaluating UCRS statistics.

Violent Crime

According to data collected and maintained by the Commonwealth, the number of violent crimes committed in Pennsylvania in 2007 (50,735),⁵⁹ 2008 (50,444),⁶⁰ 2009 (48,023),⁶¹ and 2010 (46,310)⁶² totaled 195,512. The number of violent crimes committed in 2012 (45,394),⁶³ 2013 (42,754),⁶⁴ 2014 (40,250),⁶⁵ and 2015 (40,186)⁶⁶ totaled 168,584. The crime rate similarly decreased dramatically during this period. The rate of violent crime per 100,000 population in 2007 (408.1),⁶⁷ 2008 (405.3),⁶⁸ 2009 (385.8),⁶⁹ and 2010 (364.6)⁷⁰ averaged 391. The rate per 100,000 population for 2012 (355.7),⁷¹ 2013 (334.7),⁷² 2014 (314.8),⁷³ and 2015 (313.9)⁷⁴ averaged 329.8. Thus, there were 26,928 fewer violent crimes committed in the four years after the expansion’s enactment than there were in the four years prior to its enactment. This resulted in a decrease in the violent crime rate from 391 per 100,000 population before the law to 329.8 after the law. Those versed in statistical methods surely know that correlation does not imply causation. Yet, while violent crime had been trending downwards, the drastic decrease in violent crime after the law’s enactment certainly contradicts any claim that the law encourages violence or “advances a ‘shoot first, ask questions later’ mentality.”

Murders

According to data collected and maintained by the Commonwealth, the combined number of murders in Pennsylvania in 2007 (727),⁷⁵ 2008 (698),⁷⁶ 2009 (648),⁷⁷

58. See *supra* notes 18-32.

59. Pennsylvania Uniform Crime Reporting System: Annual Uniform Crime Report (2007), <http://www.paucrs.pa.gov/UCR/Reporting/Annual/AnnualFrames.asp?year=2007>.

60. Pennsylvania Uniform Crime Reporting System: Annual Uniform Crime Report (2008), <http://www.paucrs.pa.gov/UCR/Reporting/Annual/AnnualFrames.asp?year=2008>.

61. Pennsylvania Uniform Crime Reporting System: Annual Uniform Crime Report (2009), <http://www.paucrs.pa.gov/UCR/Reporting/Annual/AnnualFrames.asp?year=2009>.

62. Pennsylvania Uniform Crime Reporting System: Annual Uniform Crime Report (2010), <http://www.paucrs.pa.gov/UCR/Reporting/Annual/AnnualFrames.asp?year=2010>.

63. Pennsylvania Uniform Crime Reporting System: Annual Uniform Crime Report (2012), <http://www.paucrs.pa.gov/UCR/Reporting/Annual/AnnualFrames.asp?year=2012>.

64. Pennsylvania Uniform Crime Reporting System: Annual Uniform Crime Report (2013), <http://www.paucrs.pa.gov/UCR/Reporting/Annual/AnnualFrames.asp?year=2013>.

65. Pennsylvania Uniform Crime Reporting System: Annual Uniform Crime Report (2014), <http://www.paucrs.pa.gov/UCR/Reporting/Annual/AnnualFrames.asp?year=2014>.

66. Pennsylvania Uniform Crime Reporting System: Annual Uniform Crime Report (2015), <http://www.paucrs.pa.gov/UCR/Reporting/Annual/AnnualFrames.asp?year=2015>.

67. Annual Uniform Crime Report (2007), *supra* note 59.

68. Annual Uniform Crime Report (2008), *supra* note 60.

69. Annual Uniform Crime Report (2009), *supra* note 61.

70. Annual Uniform Crime Report (2010), *supra* note 62.

71. Annual Uniform Crime Report (2012), *supra* note 63.

72. Annual Uniform Crime Report (2013), *supra* note 64.

73. Annual Uniform Crime Report (2014), *supra* note 65.

74. Annual Uniform Crime Report (2015), *supra* note 66.

75. Annual Uniform Crime Report (2007), *supra* note 59.

76. Annual Uniform Crime Report (2008), *supra* note 60.

77. Annual Uniform Crime Report (2009), *supra* note 61.

and 2010 (657)⁷⁸ totaled 2,730. The combined murders between 2012 (706),⁷⁹ 2013 (611),⁸⁰ 2014 (611),⁸¹ and 2015 (661)⁸² totaled 2,589. The rate of murder per 100,000 population for 2007 (5.8),⁸³ 2008 (5.6),⁸⁴ 2009 (5.2),⁸⁵ and 2010 (5.2)⁸⁶ averaged 5.5. The murder rate for 2012 (5.5),⁸⁷ 2013 (4.8),⁸⁸ 2014 (4.8),⁸⁹ and 2015 (5.2)⁹⁰ averaged 5.1. Thus, there were 141 fewer murders in the first four years after the law's enactment than there were in the four years immediately preceding the law's enactment. The murder rate per 100,000 citizens also dropped significantly during that period, from 5.5 to 5.1. The decline in murders directly contradicts the argument that the expansion would encourage violence.

Murder Conviction Rates

According to data collected and maintained by the Commonwealth, the rate of acquittal and dismissal for murder and nonnegligent manslaughter in Pennsylvania in 2007 (34.7%),⁹¹ 2008 (16.7%),⁹² 2009 (24.1%),⁹³ and 2010 (4.6%)⁹⁴ was 19.2%. The rate between 2012 (15.7%),⁹⁵ 2013 (16.7%),⁹⁶ 2014 (27.0%),⁹⁷ and 2015 (25.0%)⁹⁸ was 20.0%. So the percentage of persons charged with murder who were acquitted or had the charges dismissed remained virtually unchanged before and after the law's enactment—a direct refutation of the claim that the law provides “gang-killers” and “road rage killers” with “get out of jail free” cards.

Justified Homicides

The UCRS records the number of justifiable homicides each year, as determined by police investigation. According to that system, in the first full five years since the law's enactment (2012–2016), there were 10 justified homicides in which a criminal attacked a civilian.⁹⁹ In the five full years immediately preceding the law's enactment (2006–2010), there were 12.¹⁰⁰ Interestingly, in 2011, there had been six of these justified homicides before the law's enactment on August 27, and only two afterward.¹⁰¹ Clearly, the law did not convert emboldened murderers into self-

78. Annual Uniform Crime Report (2010), *supra* note 62.

79. Annual Uniform Crime Report (2012), *supra* note 63.

80. Annual Uniform Crime Report (2013), *supra* note 64.

81. Annual Uniform Crime Report (2014), *supra* note 65.

82. Annual Uniform Crime Report (2015), *supra* note 66.

83. Annual Uniform Crime Report (2007), *supra* note 59.

84. Annual Uniform Crime Report (2008), *supra* note 60.

85. Annual Uniform Crime Report (2009), *supra* note 61.

86. Annual Uniform Crime Report (2010), *supra* note 62.

87. Annual Uniform Crime Report (2012), *supra* note 63.

88. Annual Uniform Crime Report (2013), *supra* note 64.

89. Annual Uniform Crime Report (2014), *supra* note 65.

90. Annual Uniform Crime Report (2015), *supra* note 66.

91. Annual Uniform Crime Report (2007), *supra* note 59.

92. Annual Uniform Crime Report (2008), *supra* note 60.

93. Annual Uniform Crime Report (2009), *supra* note 61.

94. Annual Uniform Crime Report (2010), *supra* note 62.

95. Annual Uniform Crime Report (2012), *supra* note 63.

96. Annual Uniform Crime Report (2013), *supra* note 64.

97. Annual Uniform Crime Report (2014), *supra* note 65.

98. Annual Uniform Crime Report (2015), *supra* note 66.

99. PENNSYLVANIA UNIFORM CRIME REPORTING SYSTEM: ANNUAL UNIFORM CRIME REPORT: Query Results for search of justified homicides in which a criminal attacked a civilian, <http://ucr.psp.state.pa.us/UCR/Reporting/Query/IBR/QueryResultsUI.asp?Session=noxA4FF7ScFB63FCA9E10542E496420D111B51D90A&Group=2&SubGroup=View&Tab=6>.

100. *Id.*

101. *Id.*

defense victims under the law. Nor did it turn victims who would ordinarily flee into bloodthirsty killers.

Burglaries

Since critics' doomsday predictions promising mass carnage in the streets of Pennsylvania proved wildly inaccurate, it is worth exploring whether the law achieved its other intended effects, which were to empower victims of home invasions and to deter such crimes from happening at all.

According to data collected and maintained by the Commonwealth, the number of Pennsylvania burglaries in 2007 (54,506),¹⁰² 2008 (57,879),¹⁰³ 2009 (54,519)¹⁰⁴, and 2010 (54,845)¹⁰⁵ totaled 221,749. The number of burglaries in 2012 (57,017),¹⁰⁶ 2013 (51,860),¹⁰⁷ 2014 (45,659),¹⁰⁸ and 2015 (39,420)¹⁰⁹ totaled 193,956. It is no surprise that the burglary rate dropped as rapidly. The rate per 100,000 persons in 2007 (438.4),¹¹⁰ 2008 (465.0),¹¹¹ 2009 (438.0),¹¹² and 2010 (431.8)¹¹³ averaged 443.3. The rate in 2012 (446.7),¹¹⁴ 2013 (406.0),¹¹⁵ 2014 (357.1),¹¹⁶ and 2015 (307.9)¹¹⁷ averaged 379.4. This decrease of 27,793 in the number of burglaries, and 63.9 in the rate of burglaries, strongly suggests that the castle doctrine expansion effectively deterred burglaries.

While critics predicted that the castle doctrine expansion would result in a drastic increase in violent crimes, murders, and justified homicides and that murderers would easily walk free after asserting a castle doctrine defense, what really happened was the direct opposite. Violent crimes and murders decreased dramatically in the years after the law took effect and, notably, so did burglaries. Justified homicides resulting from a criminal attacking a civilian decreased as well, while the conviction rate for murderers stayed consistent. The statistics, therefore, overwhelmingly show that so far the castle doctrine expansion has been a great success.

IV. IMPACT ON PERMIT HOLDERS

In addition to being concerned about "gang killers" and "road rage killers," critics expected that concealed carry permit holders would be responsible for a considerable increase in shootings. The substantial post-enactment decreases in homicides, murders, and violent crime, as well as the slight decrease in justified homicides, is therefore even more remarkable, given the tremendous increase in the number of concealed-carry permits that were issued after the law's enactment. Sheriffs' offices throughout Pennsylvania issued 167,656 licenses to carry firearms in 2011,¹¹⁸ 245,444

102. Annual Uniform Crime Report (2007), *supra* note 59.

103. Annual Uniform Crime Report (2008), *supra* note 60.

104. Annual Uniform Crime Report (2009), *supra* note 61.

105. Annual Uniform Crime Report (2010), *supra* note 62.

106. Annual Uniform Crime Report (2012), *supra* note 63.

107. Annual Uniform Crime Report (2013), *supra* note 64.

108. Annual Uniform Crime Report (2014), *supra* note 65.

109. Annual Uniform Crime Report (2015), *supra* note 66.

110. Annual Uniform Crime Report (2007), *supra* note 59.

111. Annual Uniform Crime Report (2008), *supra* note 60.

112. Annual Uniform Crime Report (2009), *supra* note 61.

113. Annual Uniform Crime Report (2010), *supra* note 62.

114. Annual Uniform Crime Report (2012), *supra* note 63.

115. Annual Uniform Crime Report (2013), *supra* note 64.

116. Annual Uniform Crime Report (2014), *supra* note 65.

117. Annual Uniform Crime Report (2015), *supra* note 66.

118. Pennsylvania State Police: 2011 Firearms Annual Report, https://www.psp.pa.gov/firearms-information/Firearms%20Annual%20report/Pennsylvania_State_Police_2011_Firearms_Annual_Report.pdf.

in 2012,¹¹⁹ 269,273 in 2013,¹²⁰ 219,782 in 2014,¹²¹ 237,344 in 2015,¹²² and 300,565 in 2016,¹²³ for a total of 1,440,064. Clearly, these nearly 1.5 million new permit holders did not endanger their communities as critics feared they would: they did not adopt a “shoot first, ask questions later mentality.”

Residents of Potter County demonstrate just how law-abiding concealed carry permitholders can be. More than half of all adults in Potter County are licensed to carry,¹²⁴ yet there was not a single homicide in the county in all of 2016.¹²⁵ Indeed, there have only been three homicides classified as murder or nonnegligent manslaughter in Potter County in the six years since the law was passed.¹²⁶

V. IMPACT ON COURTS

Civil Actions

As mentioned above, the expanded castle doctrine provides victims immunity in civil cases. Violent attackers are now prevented from punishing their victims in civil actions for resisting violent attacks. While this provision has had little effect on court decisions so far—it appears that has not once been cited in any reported civil case before Pennsylvania's Supreme Court, Superior Court, Commonwealth Court, or Courts of Common Pleas—that arguably proves that the provision has served its purpose: to prevent frivolous lawsuits. Prospectively, its financial disincentive can be expected to continue to prevent frivolous lawsuits, which will protect victims of violent attacks from being victimized again through civil litigation.

Criminal Law

As was also mentioned above, the conviction rate in Pennsylvania remained virtually unchanged before and after the 2011 changes were enacted. Yet, the number of justified homicides in which a criminal attacked a civilian decreased after the law was passed. This, combined with the fact that, at least so far as one can gather from reported decisions, no defendant has successfully pleaded a defense under the 2011 amendments before Pennsylvania's Supreme Court, Superior Court, or Courts of Com-

119. Pennsylvania State Police: 2012 Firearms Annual Report, https://www.psp.pa.gov/firearms-information/Firearms%20Annual%20report/Pennsylvania_State_Police_2012_Firearms_Annual_Report.pdf.

120. Pennsylvania State Police: 2013 Firearms Annual Report, https://www.psp.pa.gov/firearms-information/Firearms%20Annual%20report/Pennsylvania_State_Police_2013_Firearms_Annual_Report.pdf.

121. Pennsylvania State Police: 2014 Firearms Annual Report, https://www.psp.pa.gov/firearms-information/Firearms%20Annual%20report/Pennsylvania_State_Police_2014_Firearms_Annual_Report.pdf.

122. Pennsylvania State Police: 2015 Firearms Annual Report, http://www.psp.pa.gov/firearms-information/Firearms%20Annual%20report/Pennsylvania_State_Police_2015_Firearms%20Annual_Report.pdf.

123. Pennsylvania State Police: 2016 Firearms Annual Report, https://www.psp.pa.gov/firearms-information/Firearms%20Annual%20report/Pennsylvania_State_Police_2016_Firearms_Annual_Report.pdf.

124. Paul Bedard, *Concealed gun permits hit record 16 million, 50% rate in Pa. county*, Washington Examiner (July 21, 2017), <http://www.washingtonexaminer.com/concealed-gun-permits-hit-record-16-million-50-rate-in-pa-county/article/2629324>.

125. Pennsylvania Uniform Crime Reporting System: Potter County (2016), https://ucr.psp.state.pa.us/ibi_apps/WFServlet?IBIF_ex=RUREP01&MAPAREA=52.

126. Pennsylvania Uniform Crime Reporting System: Annual Uniform Crime Report: Query Results for homicides in Potter County, <http://www.paucrs.pa.gov/UCR/Reporting/Query/IBR/QueryResultsUI.asp?Session=nsQUP1Kd55F1AA7CAA6E6462F89ED5F680A56EA6E&Group=2&SubGroup=View&Tab=6>.

mon Pleas, shows that the amendments have not had any major impact and certainly have not provided any sort of boon for criminal defendants.

Commonwealth v. Childs

The few cases in which Pennsylvania courts have considered the expanded castle doctrine have been inconsequential, with the exception of the Pennsylvania Supreme Court's 2016 decision in *Commonwealth v. Childs*.¹²⁷

On July 29, 2010, Childs, the homeowner, got into an argument with a guest. After being asked to leave, the guest reentered the home and attacked Childs with a broomstick, striking him multiple times. To stop the attack, Childs stabbed the guest once, and the guest died. Childs was convicted of possessing an instrument of crime and later of third-degree murder.

While the incident occurred before the amendments became effective, the trial occurred afterwards, and Childs wanted a jury instruction based on the amendments establishing that he was presumed to have a reasonable belief that deadly force was necessary. In other words, Childs believed that the amendments should apply retroactively. The Supreme Court of Pennsylvania agreed. Under Pennsylvania law, legislation that is procedural, rather than substantive, may apply retroactively. The Court held that the amendment creating the presumption "does not affect a person's right to use deadly force within his or her home, but rather creates an evidentiary presumption relevant to the evaluation of such a claim of self-defense, and is therefore a procedural statute."¹²⁸ Thus, the amendment was procedural rather than substantive and should apply retroactively. Strangely enough, after all the drama the enactment of the amendment creating the presumption caused, the Court determined it "does not alter a person's right to use deadly force within a dwelling."¹²⁹

Commonwealth v. Chermansky

Lost in the commotion over Pennsylvania's expansion of its self-defense law was a longstanding Pennsylvania Supreme Court case that permits the use of deadly force to stop fleeing felons.

In 1968 in *Commonwealth v. Chermansky*,¹³⁰—which is still good law in Pennsylvania—the Supreme Court of Pennsylvania held that it is legal to kill someone in the act of fleeing if they committed one of more than a dozen felonies.

John Phillip Chermansky was roused in the middle of the night by a strange noise. He inspected his home and noticed that someone had apparently tried to enter through his side door. Going to the window, he noticed a suspicious-looking man approaching homes across the street, "monkeying around the windows." Chermansky grabbed his rifle and yelled to the prowler from his doorstep: "Halt or I'll shoot!"¹³¹ The prowler tried to run, but Chermansky shot and killed him. Chermansky was convicted by a jury of murder in the second degree.

Chermansky appealed, asserting among other things that the killing was justified. He relied on "the common law rule that if the felon flees and his arrest cannot be effected without killing him, the killing is justified."¹³²

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

128. *Id.* at 824.

129. *Id.* at 830.

130. *Commonwealth v. Chermansky*, 430 Pa. 170 (1968).

131. *Id.* at 172.

132. *Id.* at 173.

The Court noted that “[a]t early common law, virtually all felonies were punishable by death.”¹³³ But nowadays, the difference between felonies and misdemeanors is less distinct. “Statutory expansion of the class of felonies has made the common law rule manifestly inadequate for modern law.”¹³⁴ Based on the expansion of laws that constitute felonies, the Court determined that the common law rule had to be narrowed:

We therefore hold that from this date forward the use of deadly force by a private person in order to prevent the escape of one who has committed a felony or has joined or assisted in the commission of a felony is justified only if the felony committed is treason, murder, voluntary manslaughter, mayhem, arson, robbery, common law rape, common law burglary, kidnapping, assault with intent to murder, rape or rob, or a felony which normally causes or threatens death or great bodily harm.¹³⁵

The Court clarified, “for the use of deadly force to be justified it remains absolutely essential, as before, that one of the enumerated felonies has been committed and that the person against whom the force is used is the one who committed it or joined or assisted in committing it.” Further, “[i]f the private citizen acts on suspicion that such a felony has been committed, he acts at his own peril. For the homicide to be justifiable, it must be established that his suspicion was correct.”¹³⁶

Since 1968, this common law principle has been relied on very rarely in reported cases. Likewise, the castle doctrine has been relied on very rarely since its enactment. Apparently, Pennsylvanians are not as bloodthirsty as opponents of the expansion expected.

VI. IMPACT OF 2011 CHANGES ON VIOLENT CRIME VICTIMS

In Somerset County, an intoxicated Tony Bittinger left a voicemail on Carl Woolley's answering machine threatening to “put a hole in [Woolley's] head.” Bittinger, who had been having an affair with Woolley's wife, then drove to Woolley's home. Bittinger approached Woolley, swinging a 32-inch club. Woolley demanded that Bittinger leave. When Bittinger continued to approach Woolley, Woolley shot him in the chest with a bow and arrow. Prosecutors opted not to charge Woolley with a crime, but had the castle doctrine not been expanded to apply outside the home, Woolley may have faced prosecution.¹³⁷

In Montgomery County, Joshua Levin and Zachary Tyler Levin, armed with baseball bats, confronted Angel Gonzalez at the home he shared with Roxann Levin (Zachary's mother and Joshua's estranged wife). Backed against his pickup truck, Gonzalez displayed his handgun to the Levins in hopes of scaring them off. He then hit Joshua Levin with the gun, trying to fend him off. Undeterred, the Levins followed Gonzalez into his backyard, continuing to threaten him. When Zachary hit Gonzalez in the head with his bat, Gonzalez shot him once, killing him. Joshua then attacked Gonzalez, who shot him also. The Montgomery County District Attorney's Office determined that Gonzalez was justified in using deadly force. Had the castle

133. *Id.* at 173 n.1.

134. *Id.* at 173.

135. *Id.* at 173-74.

136. *Id.* at 174.

137. Chris Foreman, *Revised 'Castle Doctrine' successfully argued in arrow killing case*, TribLive (Dec. 28, 2011), http://triblive.com/x/pittsburghtrib/news/s_773916.html.

doctrine not been expanded to apply outside the home, Gonzalez, like Woolley, may have been prosecuted.¹³⁸

In Westmoreland County, a psychologist, Dr. Charles Gallo, was driving on Route 30 when Patrick James Pirl began tailgating him. Pirl, who was allegedly driving under the influence, followed Gallo onto Route 381 and became increasingly aggressive. Gallo called 911 three times and tried to “ditch” Pirl eight times. But when Pirl turned his truck around and drove straight at Gallo, Gallo pulled his handgun and fired twice at the truck, striking Pirl once in the shoulder. Gallo’s attorney was preparing a defense based on the expanded castle doctrine, but the charges were dropped, in part because Pirl refused to testify for fear of incriminating himself in his own criminal case. (Pirl was charged with aggravated assault, driving under the influence, and reckless endangerment.)¹³⁹

These are some of the only known examples in which someone acting in self-defense avoided conviction by falling within the scope of the 2011 amendments. These examples show the 2011 amendments working precisely as they were intended. These victims were not “gang killers” or “road rage killers,” nor did they “shoot first, ask questions later.” These victims were innocently minding their own business when belligerent attackers suddenly targeted them. They each tried defusing the situation before resorting to deadly force, and they each faced imminent danger. Having to second-guess themselves before acting to save their lives may have cost them their lives.

VII. CONCLUSION

After Pennsylvania’s castle doctrine was expanded in 2011, violent crimes, murders, and burglaries all substantially decreased. The murder conviction rate remained essentially the same, and the number of justified homicides in which a criminal attacked a civilian decreased slightly. Meanwhile, the number of concealed-carry permits issued skyrocketed. Victims were better able to protect themselves, and they were also protected from civil liability. Thus, the amendments have worked precisely as intended, without the negative effects opponents feared.

138. Carl Hessler Jr., *DA: Use of deadly force justified in Upper Frederick shooting*, Montgomery Media (Mar. 26, 2012), http://www.montgomerynews.com/springford_reporter_valley_item/da-use-of-deadly-force-justified-in-upper-frederick-shooting/article_e6cb8caf-32c0-5bc9-a03a-fdef7e1ecd47.html.

139. Jewels Phraner, *Charges against Ligonier man dropped for gun use in road-rage case*, TribLive (Apr. 24, 2012), http://triblive.com/x/pittsburghtrib/news/westmoreland/s_770228.html.