

Lawyers say 'stand your ground' works

By DALE VINCENT

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Chichester defense attorney Mark Sisti, whose client Ward Bird was convicted of waving a gun at a woman on his property and later had his sentence commuted, said he isn't aware of the 'Stand Your Ground' law having been used as a defense.

There's no way to know, Sisti said, but it may be that police are using discretion and not charging people who would be able to use the defense successfully.

Bird was convicted of felony criminal threatening, but not reckless conduct, for waving a gun at a woman who trespassed on his property in March 2006 after getting lost trying to find property she was interested in purchasing. She did not leave when he cursed at her and ordered her off his property, but she said when she finally got back into her vehicle he charged off his porch at her waving the gun and scaring her.

Bird's mandatory prison term was commuted by the Executive Council after Gov. John Lynch negated an initial council vote to pardon Bird.

At the time, the use of deadly force was allowed only in the home and attached property - the Castle doctrine. The current law, which was proposed by Bird supporters, permits the use of deadly force any place a person has a right to be.

Sisti said he hasn't talked with House Majority Leader Rep. Steven Shurtleff, D-Concord, the prime sponsor of House Bill 135, which would repeal the state's year-old "stand your ground" law. But he said: "I'm not seeing a downside to the (stand your ground) law."

Manchester defense attorney David Ruoff, who was a prosecutor for years, also couldn't recall any use of the new law. He agrees with Sisti's assessment of the "stand your ground" law's effect.

"The change was less directed toward jury trials," Ruoff said. It was about "trying to get prosecutors not to indict and police not to charge."

Sisti said the law may deflect violence by making it clear people don't have to retreat. If anyone could be carrying a weapon, Sisti said, "Why would you bring on a confrontation?"

Sisti said there are situations in which use of deadly force would be justified, even when you aren't on your own property. If you were the victim in a road rage incident, he said, "You don't have to go 110 miles per hour to escape."

Supporters of the repeal say the current law could cost innocent lives.

Ruoff disagrees. He said the law makes clear "there is no duty to retreat in a public place" and said it can serve as a deterrent.

Londonderry defense attorney Richard Monteith, who also could not recall a use of the new law as a defense, said he had a case a number of years ago that would have been tailor-made for the "stand your ground" law.

Monteith said a young man in a car, being chased by two men in another car, was convinced the men intended to kill him.

As he fled toward his home, he called his father on his cell phone.

The father, understandably alarmed, grabbed a handgun and ran down to the end of his driveway.

"He was right on the end of his lawn," said Monteith. The son pulled in and jumped out of his car and the two other males got out of their car and approached, so the father fired a shot into the air to scare them off.

"He was charged with felony reckless conduct," Monteith said of the father, but if "stand your ground" had been in effect,



he probably wouldn't have been charged with anything.

Majority Leader Shurtleff wants to return to the Castle doctrine, which he said served the state well for decades. House Bill 135 would not allow deadly force as self-defense in the public square without first retreating from harm, if possible.

The bill also removes a provision of last year's law that prohibited civil law suits for damages filed by or on behalf of an innocent bystander injured or killed when someone legally uses deadly force.

The bill would also change the law to redefine brandishing so that showing a gun in an intimidating and menacing way would be a criminal act.

The House Criminal Justice and Public Safety Committee, which heard from dozens Tuesday during a hearing on the bill, will vote on a recommendation before the bill goes to the House.

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