

Sixtieth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1319

Introduced by

Representatives Porter, Carlisle, Klemin, S. Meyer

Senators Holmberg, Potter

1 A BILL for an Act to create and enact two new sections to chapter 12.1-05 of the North Dakota
2 Century Code, relating to the use of and liability for deadly force; and to amend and reenact
3 section 12.1-05-07 of the North Dakota Century Code, relating to the use of deadly force.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 12.1-05-07 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **12.1-05-07. Limits on the use of force - Excessive force - Deadly force.**

- 8 1. ~~A person~~ An individual is not justified in using more force than is necessary and
9 appropriate under the circumstances.
- 10 2. Deadly force is justified in the following instances:
- 11 a. When it is expressly authorized by law or occurs in the lawful conduct of war.
- 12 b. When used in lawful self-defense, or in lawful defense of others, if ~~such the~~
13 force is necessary to protect the actor or anyone else against death, serious
14 bodily injury, or the commission of a felony involving violence. ~~The use of~~
15 ~~deadly force is not justified if it can be avoided, with safety to the actor and~~
16 ~~others, by retreat or other conduct involving minimal interference with the~~
17 ~~freedom of the person menaced. A person seeking to protect someone else~~
18 ~~must, before using deadly force, try to cause that person to retreat, or~~
19 ~~otherwise comply with the requirements of this provision, if safety can be~~
20 ~~obtained thereby. But, (1) a public servant justified in using force in the~~
21 ~~performance of his duties or a person justified in using force in his assistance~~
22 ~~need not desist from his efforts because of resistance or threatened~~
23 ~~resistance by or on behalf of the person against whom his action is directed;~~
24 ~~and (2) no person is required to retreat from his dwelling or place of work~~

1 ~~unless he was the original aggressor or is assailed by a person who he knows~~
2 ~~also dwells or works there.~~ An individual does not have the duty to retreat if
3 the individual is in a place where that individual has a right to be.

4 c. When used by ~~a person~~ an individual in possession or control of a dwelling or,
5 place of work, or a ~~person~~ vehicle, or by an individual who is licensed or
6 privileged to be there, if ~~such~~ the force is necessary to prevent commission of
7 arson, burglary, robbery, or a felony involving violence upon or in the dwelling
8 or, place of work, or vehicle, and the use of force other than deadly force for
9 ~~such~~ these purposes would expose ~~anyone~~ any individual to substantial
10 danger of serious bodily injury.

11 d. When used by a public servant authorized to effect arrests or prevent
12 escapes, if ~~such~~ the force is necessary to effect an arrest or to prevent the
13 escape from custody of ~~a person~~ an individual who has committed or
14 attempted to commit a felony involving violence, or is attempting to escape by
15 the use of a deadly weapon, or has otherwise indicated that ~~he~~ the individual
16 is likely to endanger human life or to inflict serious bodily injury unless
17 apprehended without delay.

18 e. When used by a guard or other public servant, if ~~such~~ the force is necessary
19 to prevent the escape of a prisoner from a detention facility, unless ~~he~~ the
20 guard or public servant knows that the prisoner is not ~~such a person~~ an
21 individual as described in subdivision d. A detention facility is any place used
22 for the confinement, pursuant to a court order, of ~~a person~~ (1) an individual
23 charged with or convicted of an offense; or (2), charged with being or
24 adjudicated a juvenile delinquent; ~~or (3),~~ held for extradition; or (4) otherwise
25 confined ~~pursuant to~~ under court order.

26 f. When used by a duly licensed physician, or ~~a person~~ an individual acting at
27 ~~his~~ the physician's direction, if ~~such~~ the force is necessary to administer a
28 recognized form of treatment to promote the physical or mental health of a
29 patient and if the treatment is administered ~~(1)~~ in an emergency; ~~(2)~~ with the
30 consent of the patient, or, if the patient is a minor or an incompetent person,
31 with the consent of ~~his~~ the patient's parent, guardian, or other person

entrusted with ~~his~~ the patient's care and supervision; or ~~(3)~~ by order of a court of competent jurisdiction.

- g. When used by ~~a person~~ an individual who is directed or authorized by a public servant, and who does not know that, ~~if such is the case,~~ the public servant is ~~himself~~ not authorized to use deadly force under the circumstances.

SECTION 2. A new section to chapter 12.1-05 of the North Dakota Century Code is created and enacted as follows:

Use of deadly force - Presumption of fear of death or serious bodily injury.

1. An individual is presumed to have held a reasonable fear of imminent peril of death or serious bodily injury to that individual or another when using deadly force if:

- a. The individual against whom the defensive force was used was in the process of unlawfully and forcibly entering, or had unlawfully and forcibly entered a dwelling or occupied vehicle, or if the individual had removed or was attempting to remove another against that individual's will from the dwelling or occupied vehicle; and
- b. The individual who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

2. The presumption does not apply if:

- a. The individual against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling or vehicle, including an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that individual;
- b. The individual sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the individual against whom the defensive force is used;
- c. The individual who uses defensive force is engaged in an unlawful activity or is using the dwelling or occupied vehicle to further an unlawful activity; or
- d. The individual against whom the defensive force is used is a law enforcement officer who enters or attempts to enter a dwelling or vehicle in the performance of official duties and the officer provided identification in

1 accordance with any applicable law or the individual using force knew or
2 reasonably should have known that the individual entering or attempting to
3 enter was a law enforcement officer.

- 4 3. An individual who unlawfully and by force enters or attempts to enter a dwelling or
5 occupied vehicle is presumed to be doing so with the intent to commit a felony
6 involving violence.

7 **SECTION 3.** A new section to chapter 12.1-05 of the North Dakota Century Code is
8 created and enacted as follows:

9 **Immunity from criminal prosecution and civil action for justifiable use of force.**

- 10 1. An individual who uses force as permitted under this chapter is justified in using
11 force and is immune from criminal prosecution and civil liability for the use of the
12 force unless the individual against whom force was used is a law enforcement
13 officer who was acting in the performance of official duties and the officer provided
14 identification in accordance with any applicable law or the individual using force
15 knew or reasonably should have known that the individual was a law enforcement
16 officer. As used in this subsection, the term "criminal prosecution" includes
17 arresting, detaining in custody, and charging or prosecuting the defendant.
- 18 2. A law enforcement agency may use standard procedures for investigating the use
19 of force as described in subsection 1, but the agency may not arrest the individual
20 for using force unless it determines that there is probable cause that the force that
21 was used was unlawful.
- 22 3. The court shall award reasonable attorney's fees, court costs, compensation for
23 loss of income, and all expenses incurred by the defendant in defense of any civil
24 action brought by a plaintiff if the court finds that the defendant is immune from
25 prosecution or civil liability as provided in subsection 1.