

**FIRST ENGROSSMENT
with Senate Amendments**

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED 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 force
13 is necessary to protect the actor or anyone else against death, serious bodily
14 injury, or the commission of a felony involving violence. The use of deadly
15 force is not justified if it can be avoided, with safety to the actor and others, by
16 retreat or other conduct involving minimal interference with the freedom of the
17 ~~person~~ individual menaced. ~~A person~~ An individual seeking to protect
18 ~~someone else~~ another individual must, before using deadly force, try to cause
19 ~~that person~~ the other individual to retreat, or otherwise comply with the
20 requirements of this provision, if safety can be obtained thereby. ~~But, (1) a~~
21 However, the duty to retreat or avoid force does not apply under the following
22 circumstances:
- 23 (1) A public servant justified in using force in the performance of ~~his~~ the
24 public servant's duties or ~~a person~~ an individual justified in using force

1 in ~~his assistance~~ assisting the public servant need not desist from ~~his~~
2 the public servant's or individual's efforts because of resistance or
3 threatened resistance by or on behalf of the ~~person~~ other individual
4 against whom ~~his~~ the public servant's or individual's action is directed;
5 and ~~(2) no person~~

6 (2) An individual is not required to retreat within or from his that individual's
7 dwelling or place of work or from an occupied motor home or travel
8 trailer as defined in section 39-01-01, unless ~~he~~ the individual was the
9 original aggressor or is assailed by ~~a person~~ another individual who ~~he~~
10 the individual knows also dwells or works there or who is lawfully in the
11 motor home or travel trailer.

- 12 c. When used by ~~a person~~ an individual in possession or control of a dwelling
13 ~~or~~ place of work, or a person an occupied motor home or travel trailer as
14 defined in section 39-01-01, or by an individual who is licensed or privileged
15 to be there, if ~~such~~ the force is necessary to prevent commission of arson,
16 burglary, robbery, or a felony involving violence upon or in the dwelling ~~or~~
17 place of work, or occupied motor home or travel trailer, and the use of force
18 other than deadly force for ~~such~~ these purposes would expose ~~anyone~~ any
19 individual to substantial danger of serious bodily injury.
- 20 d. When used by a public servant authorized to effect arrests or prevent
21 escapes, if ~~such~~ the force is necessary to effect an arrest or to prevent the
22 escape from custody of ~~a person~~ an individual who has committed or
23 attempted to commit a felony involving violence, or is attempting to escape by
24 the use of a deadly weapon, or has otherwise indicated that ~~he~~ the individual
25 is likely to endanger human life or to inflict serious bodily injury unless
26 apprehended without delay.
- 27 e. When used by a guard or other public servant, if ~~such~~ the force is necessary
28 to prevent the escape of a prisoner from a detention facility, unless ~~he~~ the
29 guard or public servant knows that the prisoner is not ~~such a person~~ an
30 individual as described in subdivision d. A detention facility is any place used
31 for the confinement, pursuant to a court order, of ~~a person~~ (1) an individual

1 charged with or convicted of an offense; ~~or (2)~~, charged with being or
2 adjudicated a juvenile delinquent; ~~or (3)~~, held for extradition; ~~or (4)~~ otherwise
3 confined ~~pursuant to~~ under court order.

- 4 f. When used by a duly licensed physician, or ~~a person~~ an individual acting at
5 ~~his~~ the physician's direction, if ~~such~~ the force is necessary to administer a
6 recognized form of treatment to promote the physical or mental health of a
7 patient and if the treatment is administered ~~(1)~~ in an emergency; ~~(2)~~ with the
8 consent of the patient, or, if the patient is a minor or an incompetent person,
9 with the consent of ~~his~~ the patient's parent, guardian, or other person
10 entrusted with ~~his~~ the patient's care and supervision; or ~~(3)~~ by order of a court
11 of competent jurisdiction.
- 12 g. When used by ~~a person~~ an individual who is directed or authorized by a
13 public servant, and who does not know that, ~~if such is the case~~, the public
14 servant is ~~himself~~ not authorized to use deadly force under the
15 circumstances.

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

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

- 19 1. An individual is presumed to have held a reasonable fear of imminent peril of death
20 or serious bodily injury to that individual or another when using deadly force if:
- 21 a. The individual against whom the deadly force was used was in the process of
22 unlawfully and forcibly entering, or had unlawfully and forcibly entered and
23 remains within a dwelling, place of work, or occupied motor home or travel
24 trailer as defined in section 39-01-01, or if the individual had removed or was
25 attempting to remove another against that individual's will from the dwelling,
26 place of work, or occupied motor home or travel trailer as defined in section
27 39-01-01; and
- 28 b. The individual who uses deadly force knew or had reason to believe that an
29 unlawful and forcible entry or unlawful and forcible act was occurring or had
30 occurred.

2. The presumption in subsection 1 may be rebutted by proof beyond a reasonable doubt that the individual who used the deadly force did not have a reasonable fear of imminent peril of death or serious bodily injury to that individual or another.
3. The presumption in subsection 1 does not apply if the court finds that any of the following have occurred:
 - a. The individual against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01, including an owner, lessee, or titleholder, and there is not a temporary or permanent domestic violence protection order or any other order of no contact against that individual;
 - b. The individual removed or 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 deadly force is used;
 - c. The individual who uses deadly force is engaged in the commission of a crime or is using the dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01 to further the commission of a crime; or
 - d. The individual against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01 in the performance of official duties and the officer provided identification, if required, in accordance with any applicable law or warrant from a court, or if the individual using force knew or reasonably should have known that the individual entering or attempting to enter was a law enforcement officer.

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

Immunity from civil liability for justifiable use of force.

1. An individual who uses force as permitted under this chapter is immune from civil liability for the use of the force to the individual against whom force was used or to that individual's estate unless that individual is a law enforcement officer who was acting in the performance of official duties and the officer provided identification, if

- 1 required, in accordance with any applicable law or warrant from a court, or if the
2 individual using force knew or reasonably should have known that the individual
3 was a law enforcement officer.
- 4 2. The court shall award reasonable attorney's fees and court costs and
5 disbursements incurred by the defendant in defense of any civil action brought by
6 a plaintiff if the court finds that the defendant is immune from civil liability as
7 provided in subsection 1.