

INTRODUCTION

By Representative Mary Schneider

HB 1326--Armed Felons Self-Defense Exception

Senate Judiciary Committee

March 31, 2025

Chairman Larson, Vice Chairman Paulson, and distinguished members of the Senate Committee. I am Representative Mary Schneider, and I proudly represent District 21, central Fargo and West Fargo. I'm here to present HB 1326 for your consideration and to speak in favor of it.

HB 1326 presents a simple and straightforward commonsense exception to North Dakota's self-defense law intended to keep us safer.

This bill would prevent convicted felons who use a forbidden firearm in a subsequent crime from escaping conviction by claiming "justified use of force" or self-defense as they can, and have, under our current law.

This is a "bad guys" bill. I call it my drug-dealer shootout bill, because that's one of the situations in which we would find this. Two parties to a drug deal, or two quarrelling dealers, both armed, draw on each other, shoot, and if there is one left standing, that person can claim he or she shot (and likely killed or critically injured) the other in self-defense or a justified use of force. A jury can apply our current law and find that person not guilty. That is even though the felon is prohibited from having or owning a firearm. If the one claiming self-defense used a firearm prohibited by the terms and conditions of the individual's probation or parole for a previous felony, is that the outcome we want?

Our law now provides that the gun used can be seized, and there is extensive detail in how it can be sold or disposed of. Probation or parole may be deemed violated and the felon could be back in jail, or in jail, if that penalty was pursued. For possession of the prohibited firearm, the person could be charged with a Class C felony and get a maximum penalty of five years.

But wouldn't it be better if we prosecuted that individual for the actual crime committed, such as murder, attempted murder, or similar lesser crimes? Do we really want that killer back in our community in a short time because he wasn't charged with the actual crime committed, or after a self-defense acquittal? Do we want him back in the community after serving part or all of the gun sentence when he's actually murdered someone?

This issue allegedly arose in walking distance of my home. It might have been a drug deal gone wrong or just a dispute, with two armed perpetrators or perhaps one perpetrator with two guns--one to leave near the body. One man allegedly shot the other in the face, killing him, and the one left standing claimed justification or self-defense. He was a convicted felon armed with a loaded firearm he was prohibited from possessing by the terms of his parole. He killed another person with it. But he claimed self-defense and was not charged with the killing by county prosecutors. No witnesses actually saw the shooting. The convicted felon was arrested sometime later when, in a traffic stop, he allegedly again had a gun in his possession. He also allegedly had drugs taped to the inside of his thighs. When he was in jail, police executed a search warrant and found four more guns with their identifying markings removed. So, this is a bad guy, on parole and forbidden to have a gun, and he's got five or six of them. He allegedly kills someone with one of those guns and doesn't get charged with the killing because he claims self-defense. Is that right? Is that what we want?

Let's look at the bill. There are few actual changes to the law in this bill besides the elimination of self-defense for certain armed crimes. Most of the changes are updates in style and verbiage that we frequently see in law updates by Legislative Council.

So here are the significant changes:

- On line 9 "an individual is not justified in using force:

- On line 13 if the individual:

- On line 22 c. Possesses a firearm in violation of subdivision a or b of subsection 1 of section 62.1-02-01 and used the firearm at the time the danger of imminent unlawful bodily injury, sexual assault, or detention occurred.

So, the change reads, "An individual is not justified in using force if the individual possesses a firearm in violation of subdivision a or b of subsection 1 of section 62.1-02-01 and used the firearm at the time the danger of imminent unlawful bodily injury, sexual assault, or detention occurred."

This bill doesn't change the facts of the case or tell a jury or judge what to do with them. A person might still get acquitted depending on the facts and circumstances of the shooting. It just says convicted bad actors who shouldn't have a gun, who have been told they can't have a gun, who use it to commit violent acts, can't then claim justification or self-defense. They lose the right to use self-defense as an affirmative defense.

There are already restrictions on who can claim self-defense in the statute, so that isn't new. This just adds another one and fills a gap that now allows violent convicted criminals to escape proper charges for an act they committed.

Certain rights are routinely taken away because a person has been convicted of a violent crime. Parole or probation statuses are still part of that person's sentence. Our statutes already say owning or possessing a firearm for a certain period of time after conviction or on probation or parole is one of the rights you lose. If you violate that law, there are penalties for doing so. This bill just says, if you violate that law, **and** use that unlawful weapon in a subsequent--and additional violent act--you can't claim the affirmative defense of justification. It's a penalty that's been missing and is needed for the proper charging of the use of that illegal gun in another violent act.

You might describe this as a tough on crime bill or a law-and-order bill. It is. But it's not what people call an anti-gun bill. I have absolutely nothing against lawful gun ownership. This bill involves guns, but only the illegal or impermissible possession and use of a firearm by convicted criminals. It does not involve responsible firearm owners or hunters. It just penalizes convicted offenders using firearms impermissibly and/or violently in violation of their probation or parole.

I'm asking you to pass this bill to help convict violent offenders of the crimes they commit with guns they can't have--to deny them the opportunity to escape conviction by wrongfully claiming their violations were justified, that their actions were self-defense.

It may not be needed often. Hopefully never or seldom. But when it is, this bill, if it becomes law, might keep our neighborhoods just a little bit safer.