

**HOUSE BILL NO. 1497**

Introduced by

Representatives Magrum, Ertelt, Hoverson, Johnston, Kading, Paulson

Senator O. Larsen

1 A BILL for an Act to ~~create and enact section 12.1-05-06.1 of the North Dakota Century Code,~~  
2 ~~relating to use of deadly force in defense of premises and property; and to~~ amend and reenact  
3 section 12.1-05-07 of the North Dakota Century Code, relating to limits on the use of force and  
4 deadly force.

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

6 ~~SECTION 1. Section 12.1-05-06.1 of the North Dakota Century Code is created and~~  
7 ~~enacted as follows:~~

8 ~~12.1-05-06.1. Use of deadly force in defense of premises and property.~~

9 ~~An individual is justified in using deadly force against another individual if the force is used~~  
10 ~~to prevent or terminate an unlawful entry or other trespass in or upon premises, or to prevent~~  
11 ~~the damaging of property if:~~

12 ~~1. The individual would be justified in using force against another individual under section~~  
13 ~~12.1-05-06;~~

14 ~~2. When and to the degree the individual reasonably believes the deadly force is~~  
15 ~~immediately necessary to prevent the other individual's imminent commission of~~  
16 ~~arson, burglary, robbery, aggravated robbery, theft, or criminal mischief; or~~

17 ~~3. The individual reasonably believes the use of force other than deadly force to protect~~  
18 ~~the property would expose the actor or another individual to a substantial risk of death~~  
19 ~~or serious bodily injury.~~

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

22 **12.1-05-07. Limits on the use of force - Excessive force - Deadly force.**

23 1. An individual is not justified in using more force than is necessary and appropriate  
24 under the circumstances.

- 1           2.   Deadly force is justified in the following instances:
- 2           a.   When it is expressly authorized by law or occurs in the lawful conduct of war.
- 3           b.   When used in lawful self-defense, or in lawful defense of others, if such force is
- 4                necessary to protect the actor or anyone else against death, serious bodily injury,
- 5                or the commission of a felony involving violence. ~~The use of deadly force is not~~
- 6                ~~justified if it can be avoided, with safety to the actor and others, by retreat or~~
- 7                ~~other conduct involving minimal interference with the freedom of the individual~~
- 8                ~~menaced. An individual seeking to protect another individual must, before using~~
- 9                ~~deadly force, try to cause the other individual to retreat, or otherwise comply with~~
- 10              ~~the requirements of this provision, if safety can be obtained thereby. However, the~~
- 11              ~~duty to retreat or avoid force does not apply under the following circumstances:~~
- 12              ~~(1) — A public servant justified in using force in the performance of the public~~
- 13              ~~servant's duties or an individual justified in using force in assisting the public~~
- 14              ~~servant need not desist from the public servant's or individual's efforts because of~~
- 15              ~~resistance or threatened resistance by or on behalf of the other individual against~~
- 16              ~~whom the public servant's or individual's action is directed; and~~
- 17              ~~(2) — An individual is not required to retreat within or from that individual's~~
- 18              ~~dwelling or place of work or from an occupied motor home or travel trailer as~~
- 19              ~~defined in section 39-01-01, unless the individual was the original aggressor~~
- 20              ~~or is assailed by another individual who the individual knows also dwells or~~
- 21              ~~works there or who is lawfully in the motor home or travel trailer.~~
- 22           c.   When used by an individual in possession or control of a dwelling, place of work,
- 23                or an occupied motor home or travel trailer as defined in section 39-01-01, or by
- 24                an individual who is licensed or privileged to be there, if the force is necessary to
- 25                prevent commission of arson, burglary, robbery, ~~theft, damage to property,~~ or a
- 26                felony involving violence upon or in the dwelling, place of work, or occupied
- 27                motor home or travel trailer, and the use of force other than deadly force for these
- 28                purposes would expose any individual to substantial danger of serious bodily
- 29                injury.
- 30           d.   When used by a public servant authorized to effect arrests or prevent escapes, if
- 31                the force is necessary to effect an arrest or to prevent the escape from custody of

1 an individual who has committed or attempted to commit a felony involving  
2 violence, or is attempting to escape by the use of a deadly weapon, or has  
3 otherwise indicated ~~that~~ the individual is likely to endanger human life or to inflict  
4 serious bodily injury unless apprehended without delay.

- 5 e. When used by a guard or other public servant, if the force is necessary to prevent  
6 the escape of a prisoner from a detention facility, unless the guard or public  
7 servant knows that the prisoner is not an individual as described in subdivision d.

8 A detention facility is ~~any~~ a place used for the confinement, pursuant to a court  
9 order, of an individual charged with or convicted of an offense, charged with  
10 being or adjudicated a juvenile delinquent, held for extradition, or otherwise  
11 confined under court order.

- 12 f. When used by a duly licensed physician, or an individual acting at the physician's  
13 direction, if the force is necessary to administer a recognized form of treatment to  
14 promote the physical or mental health of a patient and if the treatment is  
15 administered in an emergency; with the consent of the patient, or, if the patient is  
16 a minor or an incompetent person, with the consent of the patient's parent,  
17 guardian, or other person entrusted with the patient's care and supervision; or by  
18 order of a court of competent jurisdiction.

- 19 g. When used by an individual ~~who~~ is directed or authorized by a public servant,  
20 and who does not know ~~that~~ the public servant is not authorized to use deadly  
21 force under the circumstances.