

2017 SENATE JUDICIARY

SB 2315

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2315
2/6/2017
27932

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to use of deadly force in defense of premises and property; relating to limits on the use of force and deadly force.

Minutes:

Testimony attached #

1,2,3,4

Chairman Armstrong called the committee to order on SB 2315. All committee members were present.

David Clemens, North Dakota State Senator District 16, introduced and testified in support of the bill as well as introduced proposed amendments. (see attachment 1)

Chairman Armstrong: "Two of the crimes that are accurately listed on here are misdemeanor crimes. I have some concerns about using deadly force on any crime that is a misdemeanor?"

Senator Clemens: "It's in here because there have been situations regardless of the crime, if the person is being threatened with his life or physical bodily injury, you should be able to defend yourself."

Chairman Armstrong: "How is that different from current law?"

Senator Clemens: "Probably not too much on that area. This bill is dealing with the responsibility to retreat."

Chairman Armstrong: "If that's the intent of the bill then I understand that. But I think this bill does more than that."

Senator Clemens: "There are a couple areas that this bill is doing that the current bill does not do. This bill removes the burden of proof on the home owner for the ability to retreat."

Senator Myrdal: Can you address section 1 line 18? I'm a 2nd amendment defendant but it seems a little scary to me that you can shoot someone to prevent him from fleeing."

Senator Clemens: "There can be many scenarios of what could be happening in the case of a home invasion. This all goes back to the case of does the victim feel that they are in danger. A person can be fleeing but then encounter the home owner depending on the scenario of the house. If the intruder is fleeing and he runs into you and he pulls out a knife or a weapon on you, then that'd be an example. This isn't where the person is fleeing away from you and is no threat anymore to you."

Senator Luick: "Does this mimic the state of Texas law?"

Senator Clemens: "The residents who brought this to me looked at Texas law."

John Ertelt, Resident of District 24 Barnes County, testified in support of the bill. (see attachment 2)

John proceeded to tell a story about an event where they stole some property and that they weren't satisfied with that kind of theft, so they broke into his house and he was terrified. They stole a bunch of items out of his house and must have heard him walking upstairs so they took off running with the property they stole.

"I hear that crime is out of control. When it comes to a rural area like that, it seems to me that crime is getting worse. I think we need to send this bill into law."

Andrew Alexis Varvel, North Dakota citizen, testified in opposition of the bill. (see attachment 3)

Rosa Larson, North Dakota States Attorney Association, testified in opposition of the bill.

"Last year in Minot the Minot Police Department received 444 burglary calls, 26 robbery calls, and 850 theft calls. Out of those that were charged was ultimately 6 burglaries, 7 robberies, and 145 thefts. I can see where the sponsor of this bill is coming from, but we are talking about using deadly force for stolen property. I ask that you give this a Do Not Pass. This bill does not put limits on just homes, it makes it a free for all for anybody running away from a store, or a shop, or whatever. This is a deadly force bill and we do not think it is safe. I just don't want to see people dead from a burglary. We shouldn't end up with more victims."

Senator Luick: "Do you know how long other states have had these laws in place, and if so, do you have any information that shows these laws are deterring crime?"

Rosa Larson: "No, I don't."

Senator Myrdal described how she lived in Texas and how they are not running around like crazy down there and shooting everyone despite them passing a law similar to this.

"How many numbers of people have felt in danger for their life in the figures you gave earlier?"

Rosa Larson: "In that one scenario I gave there was a weapon that was displayed. In other situations, we have had two other robberies where one has been resolved and one is still pending where there was a huge concern for safety but there were no weapons visibly displayed to the victim."

Carel Two-Eagel, North Dakota citizen, testified in opposition of the bill. No written testimony.

"I've been a property owner for quite a while and had lots of problems with things that are set outside that get stolen. But I think this bill is far too broad and far too vague. If someone sees you carrying a weapon that isn't deadly but they don't know the difference, they will take off running. They won't want to risk the fact that that weapon could be a deadly weapon and not just a prop or a non-deadly weapon. This could lead to a lot of accidents and it isn't worth it. I ask for a Do Not Pass."

Aaron Birst, North Dakota Association of Counties, testified in opposition of the bill. No written testimony.

"This bill should not be passed for the reasons that have already been outlined. But also that this bill allows for temporary criminal mischief, like scratching someone's car. This bill would allow that. A lot of bad people like gang members or violent offenders would use this bill to harm others."

Chairman Armstrong: "How do you feel current self-defense law is treated in the court system?"

Aaron Birst: "It works great. It has worked great for a while. The system works."

Senator Luick: "If you have an instance on your property and the perpetrator is not in your home, are you allowed to shoot him?"

Aaron Birst: "The reality is that if your life is in danger, you can use deadly force and it doesn't matter where you are."

Christopher T. Dodson, Executive Director of North Dakota Catholic Conference, testified in opposition of the bill. (see attachment 4)

Jackson Lofgren, President of the North Dakota Association of Criminal Defense Lawyers, testified in opposition of the bill. No written testimony.

"This bill gives anybody the justification for shooting down someone who is doing a misdemeanor crime. This bill does not help anyone at all. A kid could steal your Christmas decorations and you could shoot him while he's running down the street. It's too vague and too broad and does not help anything."

Senator Luick: "Referring this to Texas law, what is happening in that state?"

Jackson Lofgren: "There are some liberal gun laws you can carry everywhere. But as far as this law relates to their law, I do not know."

Senator Luick: "I get the point that we are fearful about where this can go. I'm interested in the other areas where this would be beneficial?"

Jackson Lofgren: "Under current law, if you are in fear of your life or someone else then you are justified to use deadly force. I've never had a case where there was a real question if a person really did or did not fear for their life."

Chairman Armstrong closed the hearing on SB 2315.

No motions were made

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2315 Committee Work
2/6/2017
27945

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to use of deadly force in defense of premises and property; relating to limits on the use of force and deadly force.

Minutes: **No written testimony**

Chairman Armstrong began the discussion on SB 2315. All committee members were present.

The committee did not discuss the bill.

Senator Luick motioned Do Not Pass. **Senator Myrdal** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Senator Larson carried the bill.

Chairman Armstrong closed the discussion on SB 2315.

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2315

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Luick Seconded By Senator Myrdal

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Larson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2315: Judiciary Committee (Sen. Armstrong, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2315 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

SB 2315

① 2/6/17
SENATE BILL 2315

INTRODUCED BY

DAVID CLEMENS

SENATOR DISTRICT 16

WEST FARGO/FARGO

SENATE BILL 2315 HAS BEEN INTRODUCED AT THE REQUEST OF NORTH DAKOTA RESIDENTS THAT WANTED MORE CLARITY CONCERNING THE DEFENSE OF THEMSELVES INVOLVING HOMES AND PROPERTY.

SENATE BILL 2315 WOULD ALLOW HOME AND PROPERTY OWNERS THE USE OF DEADLY FORCE ONLY WHEN THE RESIDENT/OWNER WAS IN FEAR OF SERIOUS BODILY INJURY OR DEATH. THE BILL WOULD NOT REQUIRE THE RESPONSIBILITY OF RETREAT BY THE OWNER.

SENATE BILL 2315 WILL NOT JUSTIFY DEADLY FORCE FOR THE SIMPLE ACT OF ROBBERY OR ANY OTHER ACT IF THE OWNER IS NOT THREATENED WITH SERIOUS BODILY INJURY OF DEATH.

PLEASE NOTE THE ATTACHED AMENDMENT TO SENATE BILL 2315.

I ASK FOR YOUR FAVORABLE CONSIDERATION OF SENATE BILL 2315.

SUBMITTED BY,

SENATOR CLEMENS

DISTRICT 16

1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2315

Page 1, line 17, remove "aggravated robbery."

Page 1, line 19, remove ", aggravated robbery"

Page 1, line 19, replace the second "or" with "and"

Renumber accordingly

2

for

2/8/17

Statement-Testimony in support of SB 2315
John W. Ertelt - Barnes County

In view of the fact of the increase of the crimes of burglary-home invasions and theft of property in ND, I think it is necessary to pass this bill into law. The criminal element needs to be sent the message that there could be serious consequences for their commission of these crimes. The duty to retreat found in the current statute under section 12.1-05-07 should be removed because it basically invalidates self defense outside the confines of your dwelling, place of work, or an occupied motor home or travel trailer as defined in section 39-01-01. I have included a partial list below of states that do not have a duty to retreat law. According to my research there are currently 26 states that do not have the duty to retreat provision in their statutes. Georgia is very explicit about the law-abiding citizen having no duty to retreat when he fears for his life. We all joke about Texas being extremely progressive in terms of gun laws but I'm still at a loss to find a single state more "front and center" about when/where authorization of deadly force is authorized. I have included section 16-3-23.1 of Georgia law below. You will also find section 22-18-4 of South Dakota law. I have not heard that South Dakota has had any adverse problems with their law and it specifically mentions the use of force to protect property and the person does not have the duty to retreat. Thank you for your time and consideration on this bill. I ask the committee to please enter a do pass recommendation for SB 2315.

Alabama
Arizona
Georgia
Indiana
Iowa
Kansas
Louisiana
Mississippi
Montana
North Carolina
South Carolina
South Dakota
Tennessee
Texas
Utah
Washington
Wyoming

South Dakota

22-18-4. Justifiable use of force to protect property--Use of deadly force--Duty to retreat.

Any person is justified in the use of force or violence against another person when the person reasonably believes that such conduct is necessary to prevent or terminate the other person's trespass on or other criminal interference with real property or personal property lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal right to protect. However, the person is justified in the use of deadly force only as provided in §§ 22-16-34 and 22-16-35. A person does not have a duty to retreat if the person is in a place where he or she has a right to be.

Source: SDC 1939, § 13.2402 (3); SL 2005, ch 120, § 8; SL 2006, ch 116, § 2.

22-16-34. Justifiable homicide--Resisting attempted murder--Resisting felony on person or in dwelling house.

Homicide is justifiable if committed by any person while resisting any attempt to murder such person, or to commit any felony upon him or her, or upon or in any dwelling house in which such person is.

Source: SDC 1939, § 13.2003 (1); SL 2005, ch 120, § 165.

22-16-35. Justifiable homicide--Defense of person--Defense of other persons in household.

Homicide is justifiable if committed by any person in the lawful defense of such person, or of his or her husband, wife, parent, child, master, mistress, or servant if there is reasonable ground to apprehend a design to commit a felony, or to do some great personal injury, and imminent danger of such design being accomplished.

Source: SDC 1939, § 13.2003 (2); SL 2005, ch 120, § 166.

Georgia

O.C.G.A § 16-3-23.1 – No duty to retreat prior to use of force in self-defense.

A person who uses threats or force in accordance with Code Section 16-3-21, relating to the **use of force in defense of self or others**, Code Section 16-3-23, relating to the use of force in **defense of a habitation**, or Code Section 16-3-24, relating to the **use of force in defense of property other than a habitation**, has **no duty to retreat** and has the right to stand his or her ground and use force as provided in said Code sections, including deadly force. (**emphasis added**)

Senate Judiciary Committee

Testimony on Senate Bill 2315

Andrew Alexis Varvel

February 6, 2017

My name is Andrew Alexis Varvel. I oppose Senate Bill 2315.

Trespassing is wrong. Shoplifting is wrong. Vandalism is wrong. However, none of these crimes should be capital offenses.

Have you ever been falsely accused? Do you know anybody who has been falsely accused? I don't think anybody likes getting falsely accused.

If a proficient pickpocket plants evidence of theft upon a victim of murder, who is going to be believed, the living or the dead? A shopkeeper could murder a customer or a business owner could murder an employee, and so long as plausible evidence of theft gets planted, who's the wiser?

Senate Bill 2315 would be a wonderful bill if one were a pimp. Sex traffickers could kill one of their girls, plant evidence of theft, and the presumption of guilt would be on the girl – not the pimp. This would be an effective way to create a gangster's paradise.

This bill would also create powerful incentive to shop online or from mail order catalogs rather than risk one's life shopping locally.

Do you really think it would be wise to give protesters the idea that they could legally kill pipeline workers and pipeline security if the pipeline company trespasses upon and mutilates treaty land that has also been customary ground for sacred pilgrimage?

Senate Bill 2315 is not pro-life. It is anti-life. This bill allows people to kill a child for stealing a loaf of bread. It allows people to kill a teenager for stealing a pack of diapers.

I recommend one of two options – one is to recommend DO NOT PASS. The other would be to “hoghouse” it and turn this bill into a way to alleviate tensions by shifting the boundary line between Grant County and Morton County to the Little Heart River. The protests have exhausted Morton County, and Morton County needs a break. So, let's transfer this responsibility to Grant County. Thank you.

Andrew Alexis Varvel
2630 Commons Avenue
Bismarck, ND 58503

HOGHOUSE AMENDMENT LANGUAGE

FOR A BOUNDARY ADJUSTMENT

BETWEEN GRANT COUNTY AND MORTON COUNTY

A BILL for an Act to amend and reenact sections 11-01-20 and 11-01-31 relating to the adjustment of boundaries for Grant County and Morton County.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-01-20 of the North Dakota Century Code is amended and reenacted as follows:

11-01-20. Grant County.

Beginning at a point where the line between ranges ninety and ninety-one west of the fifth principal meridian intersects the main channel of the South Fork Cannonball River; thence in a northeasterly direction along the main channel of the South Fork Cannonball River and the main channel of the Cannonball River ~~to the intersection of the main channel of the Cannonball River with the eighth standard parallel; thence west along the eighth standard parallel to the southeast corner of township one hundred thirty three north, range eighty three west; thence north along the line between ranges eighty two and eighty three west to the northeast corner of township one hundred thirty three north, range eighty three west; thence west along the line between townships one hundred thirty three and one hundred thirty four north to the southeast corner of township one hundred thirty four north, range eighty five west; thence north along the line between ranges eighty four and eighty five to the northeast corner of township one hundred thirty six north, range eighty five west, a point on the ninth~~

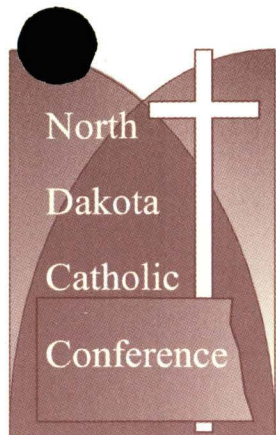
~~standard parallel; thence west along the ninth standard parallel to the southeast corner of township one hundred thirty-seven north, range eighty-eight west; thence north along the line between ranges eighty-seven and eighty-eight west to the northeast corner of township one hundred thirty-seven north, range eighty-eight west; to the main channel of the Missouri River; thence in a northerly direction along the main channel of the Missouri River to the main channel of the Little Heart River, thence in a westerly direction along the main channel of the Little Heart River to the intersection of the main channel of the Little Heart River with the line between townships one hundred thirty-seven and one hundred thirty-eight north; thence west along the line between townships one hundred thirty-seven and one hundred thirty-eight north to the northwest corner of township one hundred thirty-seven north, range ninety west; thence south along the line between ranges ninety and ninety-one west to the southwest corner of township one hundred thirty-seven north, range ninety west, a point on the ninth standard parallel; thence east along the ninth standard parallel to the northwest corner of township one hundred thirty-six north, range ninety west; thence continuing south along the line between ranges ninety and ninety-one to the southwest corner of township one hundred thirty-three north, range ninety west, a point on the eighth standard parallel; thence east along the eighth standard parallel to the northwest corner of township one hundred thirty-two north, range ninety west; thence continuing south along the line between ranges ninety and ninety-one west to the point of beginning.~~

SECTION 2. AMENDMENT. Section 11-01-31 of the North Dakota Century Code is amended and reenacted as follows:

11-01-31. Morton County.

Beginning at the southwest corner of township one hundred thirty-eight

north, range ninety west of the fifth principal meridian; thence east along the line between townships one hundred thirty-seven and one hundred thirty-eight north ~~to the northwest corner of township one hundred thirty-seven north, range eighty-seven west; thence south along the line between ranges eighty-seven and eighty-eight west to the southwest corner of township one hundred thirty-seven north, range eighty-seven west, a point on the ninth standard parallel; thence east along the ninth standard parallel to the northwest corner of township one hundred thirty-six north, range eighty-four west; thence south along the line between ranges eighty-four and eighty-five west to the southwest corner of township one hundred thirty-four north, range eighty-four west; thence east along the line between townships one hundred thirty-three and one hundred thirty-four north to the northwest corner of township one hundred thirty-three north, range eighty-two west; thence south along the line between ranges eighty-two and eighty-three west to the southwest corner of township one hundred thirty-three north, range eighty-two west, a point on the eighth standard parallel; thence east along the eighth standard parallel to the point where the eighth standard parallel intersects the main channel of the Cannonball River; thence in a northeasterly direction along the main channel of the Cannonball River to the intersection of the main channel of the Little Heart River with the line between townships one hundred thirty-seven and one hundred thirty-eight north; thence in an easterly direction along the main channel of the Little Heart River to the main channel of the Missouri River; thence in a northerly direction along the main channel of the Missouri River to the intersection of the tenth standard parallel with the main channel of the Missouri River; thence west along the tenth standard parallel to the northwest corner of township one hundred forty north, range ninety west; thence south along the line between ranges ninety and ninety-one west to the point of beginning.~~



*Representing the Diocese of Fargo
and the Diocese of Bismarck*

Christopher T. Dodson
Executive Director and
General Counsel

pg 1

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2/6/17

To: Senate Judiciary Committee
From: Christopher T. Dodson, Executive Director
Subject: SB 2315 - Use of Deadly Force in Defense of Premises and Property
Date: February 6, 2017

When and how much force an individual can use against another is ultimately a moral issue. The Bible presents the precept "You shall not kill" as a divine commandment. Those of different faiths or no faith accept the same injunction because the value of all human life. From this precept comes a fundamental principle: No one can claim the right to deliberately kill another human being.

The injunction is rooted in the recognition that all human life is sacred and that all human life has inherent value.

Yet as far back as the Book of Exodus, faced with often tragic cases that can occur, we sought a fuller and deeper understanding of what the commandment prohibits and prescribes, particularly in cases of self-defense. Thomas Aquinas later provided the most accepted and definitive treatment of the subject. What he taught, though not entirely new, became the basis of Western Law.

Aquinas restated the fundamental principle that it is never permissible for a private individual to intentionally kill a person. This injunction applies even in cases of self-defense. A person can, however, use *moderate* force to repel an aggressor when it is necessary to protect oneself or someone for whom the person is responsible. If the use of force meets these conditions, and the aggressor unintentionally dies as a result, the person is not guilty of murder. If however, these conditions are not met and the aggressor dies, the person has committed murder.

Three fundamental principles underlie this teaching. First, intentional killing of an innocent person is always evil. Second, intentional killing of a wrongdoer is also always wrong, though the use of force that unintentionally results in the death of a wrongdoer can be justified. Third, the mere fact that an individual is not where he or she should be or may be intending harm does not create an exception to the rule. Even in that case, a person cannot intend to kill the individual.

Through the centuries, courts and lawmakers incorporated these principles into law. The “duty to retreat” in English common law finds its basis in the necessity requirement, since the use of deadly force could not be viewed as necessary if the person could escape. Eventually, some jurisdictions, including North Dakota, adopted the “Castle Doctrine,” which removed the duty to retreat in a person’s dwelling or work place. The Castle Doctrine does not necessarily contradict the fundamental principles since it is based on several presumptions about the ability to retreat.¹

Senate Bill 2315 contradicts these fundamental moral principles.

First, the bill’s removal of the requirement to avoid the use of deadly force by retreat or other conduct when safely possible would, practically by definition, allow intentional killing even when it is not necessary. This violates the fundamental moral rule that a person cannot use deadly force except when it is *necessary* for self-defense.

Second, Senate Bill 2315 would allow the use of deadly force — intentional killing — to prevent a wrongdoer from fleeing. Again, this is in direct contradiction of the principle that a person cannot use deadly force unless it is necessary for self-defense.

Third, SB 2315 would allow the use of deadly force to prevent trespassing or the theft or damage to property. Because the use of deadly force is justified only when it is intended and necessary for the protection of self and others, it follows that deadly force can never be used in defense of property. The principle always recognized in Western Law and morality has been that only moderate force — and even then, only the amount necessary — is justified to protect property.

Senate 2315 is contrary to the moral law and the precepts that have guided society for millennia. We urge a **Do Not Pass** recommendation.

¹ Indeed, something like the Castle Doctrine appears in Exodus 22:1. It states: “If a thief is caught in the act of housebreaking and beaten to death, there is no bloodguilt involved.” The next verse, however, states: “But if after sunrise he is thus beaten, there is bloodguilt.” In other words, killing an intruder at night was permissible, but killing an intruder during the day was not because escaping was possible in daylight.