

2021 HOUSE JUDICIARY

HB 1498

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

HB 1498

2/15/2021

Relating to justification, use of force in defense of property, limits on the use of force and deadly force, and immunity from civil liability.

Chairman Klemin called the hearing to order at **5:50 PM**.

Present: Representatives Klemin, Karls, Becker, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter. Absent: Buffalo

Discussion topics:

- Duty to retreat
- Force and deadly force

Rep Paulson moved amendment 02002 and Page 3 Line 2 to legally allowed
Rep Christensen seconded

Voice vote, motion carried.

Rep Christensen moved a Do Pass as Amended,
Seconded by Rep Paulson.

Roll call vote

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Rick Becker	Y
Representative Ruth Buffalo	AB
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Karla Rose Hanson	N
Representative Terry B. Jones	Y
Representative Jeffery J. Magrum	Y
Representative Bob Paulson	Y
Representative Gary Paur	Y
Representative Shannon Roers Jones	AB
Representative Bernie Satrom	AB
Representative Steve Vetter	Y

Motion carried. 10 – 1 – 3

Rep Magrum is carrier.

Additional written testimony: #6668

6:02 PM Chairman Klemin hearing closed.

House Judiciary
HB 1498
Feb 15, 2021
Page 2

DeLores D. Shimek
Committee Clerk by Anna Fiest

De 2/15/21
1041

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1498

Page 2, line 25, after "activity" insert "that gives rise to the need for the use of deadly force"

Page 2, line 26, after "used" insert ", unless the circumstances in subdivision b of subsection 2 of section 12.1-05-03 apply."

Page 3, line 2, replace "authorized" with "legally allowed"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1498: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 1 NAY, 3 ABSENT AND NOT VOTING). HB 1498 was placed on the Sixth order on the calendar.

Page 2, line 25, after "activity" insert "that gives rise to the need for the use of deadly force"

Page 2, line 26, after "used" insert ", unless the circumstances in subdivision b of subsection 2 of section 12.1-05-03 apply."

Page 3, line 2, replace "authorized" with "legally allowed"

Renumber accordingly

21.0667.02002
Title.

Prepared by the Legislative Council staff for
Representative B. Koppelman
February 15, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1498

Page 2, line 25, after "activity" insert "that gives rise to the need for the use of deadly force"

Page 2, line 26, after "used" insert ", unless the circumstances in subdivision b of subsection 2 of section 12.1-05-03 apply."

Renumber accordingly

2021 SENATE JUDICIARY

HB 1498

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

HB 1498
4/6/2021

A BILL for an Act to create and enact a new section to chapter 62.1-02 of the North Dakota Century Code, relating to brandishing a dangerous weapon; and to amend and reenact sections 12.1-05-01, 12.1-05-06, 12.1-05-07, and 12.1-05-07.2 of the North Dakota Century Code, relating to justification, use of force in defense of property, limits on the use of force and deadly force, and immunity from civil liability.

Hearing called to order all Senators Present: **Myrdal, Luick, Dwyer, Bakke, Fors, Heitkamp, Larson.** [9:45]

Discussion Topics:

- Castle Doctrine in Statute
- Self Defense defined in state law

Rep. Ben Koppleman, R-West Fargo, provided testimony in favor #11397 [9:37]

Brian Gosch, NRA, provided testimony in favor [9:54]

Pete Hannabit, North Dakota Farm Bureau, provided testimony in favor [10:03]

Wayne Eli, Grand Forks, ND, provided testimony in favor [10:04]

John Ertelt, Ariska, ND, provided testimony in favor [10:22]

Ladd Erickson, McLean County States Attorney, provided testimony in opposition #11369 [10:27]

Susan Beehler, Mandan, ND, provided testimony in opposition #11384 [10:45]

Cheryl Biller, Fargo, ND, provided testimony in opposition #11367 [10:58]

Christopher Dodson, ND Catholic Conference provided testimony in opposition #11380 [11:02]

Additional written testimony:

#11330, #11358, #11379, #11382, #11383, #11388

Hearing Adjourned [11:30]

Jamal Omar, Committee Clerk

HB 1498

Testimony- Rep. Ben Koppelman

Madame Chairman and Members of the Committee, thank you for the opportunity to introduce HB1498 to your committee. I introduced this bill to ensure that our citizens have a reasonable opportunity to exercise their Constitutional right to protect themselves as afforded by the Second Amendment in a way that is reasonable and not reckless.

The changes in Section 1 make the chapter read more consistently by removing language that could be read to the contrary of the immunity from civil liability for justifiable use of force found in 12.1-05-07.2.

Section 2 removes the requirement to request someone to desist from a crime prior to the use of force to stop crimes such as criminal trespass and burglary. Force used in this instance would still have to be reasonable and would likely not be deadly force unless the perpetrator first threatens the individual's life or serious bodily injury.

One of the largest changes in the bill is in Section 3, which removes the 'Duty to Retreat' when an individual is not breaking the law, is not instigating a confrontation, and is in any place they are legally allowed to be. This position is consistent with 37 other states that have similar laws and judicial decisions (see attached map). We currently are one of only 13 states that have a 'duty to retreat' in these instances. This change does not remove all 'duty to retreat' but rather only removes the requirement for law-abiding citizens. **The change to this section does not allow an individual to use deadly force unless 'such force is necessary to protect the actor or anyone else against death, serious bodily injury, or the commission of a felony involving violence'.** This change also would be consistent with the finding of the U.S. Supreme Court.

In the SCOTUS case Brown v. United States, the high court said:

“that if a man reasonably believes that he is in immediate danger of death or grievous bodily harm from his assailant he may stand his ground and that if he kills him, he has not exceeded the bounds of lawful self-defense.” The opinion went on to say: “Detached reflection cannot be demanded in the presence of an uplifted knife. Therefore, in this Court, at least, it is not a condition of immunity that one in that situation should pause to consider whether a reasonable man might not think it possible to fly with safety or to disable his assailant rather than to kill him.” ^[2]

Additionally, the changes in the section 3 would extend the “castle doctrine” to an individual’s motor vehicle as many states have already done.

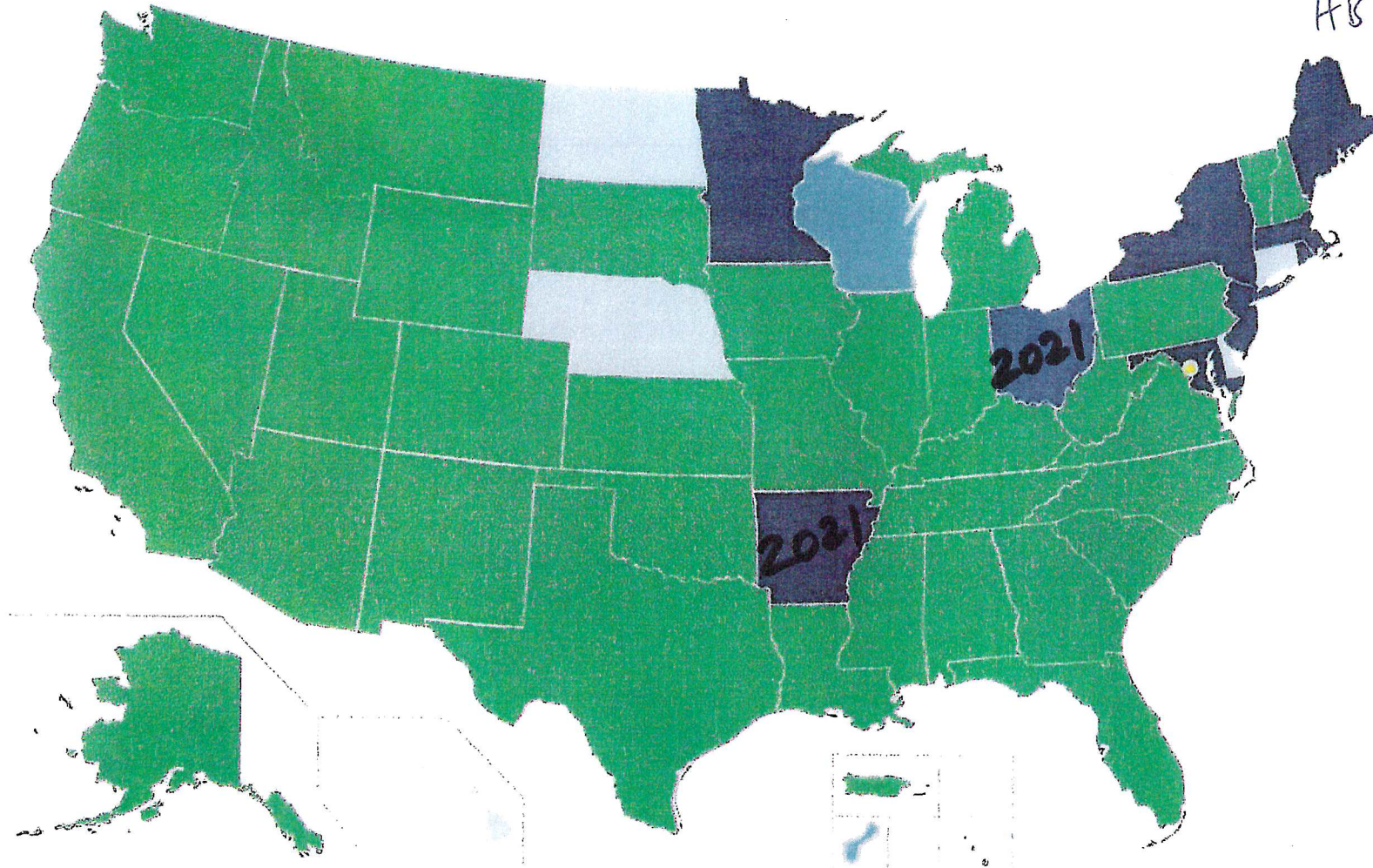
Section 4 of the bill would add ‘loss of income’ to the awards to the defendant in a civil case where immunity applies. This is important because there are often harms that an innocent defendant incurs during a frivolous lawsuit beyond just attorney’s fees and court costs. It often tarnishes their reputation and can harm their ability to earn a living even if they are innocent and justified in their actions under the law.

Finally, Section 5 of the bill protects an individual from prosecution for brandishing a weapon on their own property. This provision would not allow an individual to terrorize, menace, or participate in other disorderly conduct. This change is necessary to ensure that all property owners are legally allowed to protect their property without risk of criminal charges in cases similar to that of the St. Louis, Missouri couple who displayed firearms and successfully deterred rioters from entering their property and ultimately protected themselves and their families from harm, but were later charged with a crime.

Madame Chairman and Members of the committee, I respectfully request a DO-PASS recommendation from your committee. Thank You for your time.

BL

HB 1498



- Stand your ground (35 states plus PR, CNMI) 37 states as of 4/1/21
- Duty to retreat except in your home (AR, MA, MD, ME, MN, NJ, NY, RI)
- Duty to retreat except in your home or vehicle (OH)
- Duty to retreat except in your home or workplace (CT, DE, HI, ND, NE)
- Duty to retreat except in your home or vehicle or workplace (WI, GU)
- Middle-ground approach (DC)
- No settled rule (AS, VI)



A Proud Past – A Promising Future
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STATE OF NORTH DAKOTA

712 5th Avenue
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Washburn, ND 58577-1108
701.462.8541
www.mcleancountynd.gov

Ladd R. Erickson
McLean County State's Attorney
Service: 28sa@nd.gov

April 6, 2021

Madam Chairman and members of the committee, my name is Ladd Erickson and I am the McLean and Sheridan County State's Attorney. I appear here to oppose HB1498 and intend to explain my opposition using the attached documents throughout my testimony.

Thank you,



Ladd R. Erickson

K - 6.01. Murder (Intentionally or Knowingly) 2013

A person who intentionally or knowingly causes the death of another human being is guilty of murder.

ESSENTIAL ELEMENTS OF OFFENSE

The State's burden of proof is established if the evidence shows beyond a reasonable doubt, the following essential elements:

1. On or about March 1, 2021 in McLean, North Dakota;
2. The Defendant, John Doe;
3. Intentionally or knowingly;
4. Caused the death of Jane Doe, a human being, and
- 5. *The Defendant did not act in self-defense or his actions were not excused.***

K - 6.20. Manslaughter (Reckless Conduct)2013

If you find the Defendant not guilty of the crime of murder, then you must consider whether the Defendant is guilty of the crime of manslaughter, an offense necessarily included in the offense charged.

A person who recklessly causes the death of another human being is guilty of manslaughter.

ESSENTIAL ELEMENTS OF OFFENSE

The State's burden of proof is satisfied if the evidence shows, beyond a reasonable doubt, the following essential elements:

1. On or about March 1, 2021, in McLean County, North Dakota;
2. The Defendant, John Doe;
3. Recklessly;
4. Caused the death of Jane Doe, a human being and
- 5. *The Defendant did not act in self-defense or his actions were not excused.***

- 6.30. Negligent Homicide (Negligently Causes Death) 2013

If you find the Defendant not guilty of the crime of manslaughter, then you must consider whether the Defendant is guilty of the crime of negligent homicide.

A person who negligently causes the death of another human being is guilty of negligent homicide.

ESSENTIAL ELEMENTS OF OFFENSE

The State's burden of proof is satisfied if the evidence shows, beyond a reasonable doubt, the following essential elements:

1. On or about March 1, 2021 in McLean County, North Dakota;
2. The Defendant, John Doe;
3. Negligently;
4. Caused the death of Jane Doe, a human being; and
- 5. *The Defendant did not act in self-defense or his actions were not excused.***

- 3.01. Additional Element of Offense - Nonexistence of Defense 2003

Evidence has been presented that the Defendant acted in self-defense or was excused. The State must prove beyond a reasonable doubt, as an additional element of the offense charged, that the Defendant was not acting in self-defense or was excused. The Defendant does not have the burden of proof as to this defense. If the State has failed to prove beyond a reasonable doubt that the Defendant did not act in self-defense or his actions were not excused, the defendant is entitled to a verdict of not guilty.

K - 3.08. Effect of Intoxication on Culpability 1985

The culpability required as an essential element of the crime of murder is that the Defendant purposely engaged in the prohibited conduct engaged in the prohibited conduct while knowing or having a firm belief, unaccompanied by substantial doubt, that the Defendant was doing so, whether or not it was the Defendant's purpose to do so engaged in the prohibited conduct in conscious and clearly justifiable disregard of a substantial likelihood of the existence of relevant facts or risks, involving a gross deviation from acceptable standards of conduct.

If the evidence shows that the Defendant was intoxicated at the time of committing the alleged offense, you may consider that fact in deciding whether the Defendant acted with the required culpability.

K - 3.10. Effect of Voluntary Intoxication 1985

Voluntary intoxication at the time of committing the alleged offense does not relieve a Defendant of criminal responsibility for the crime.

K - 3.34. Self-Defense (Reasonableness of Accused's Belief) 2012

The Defendant's conduct is to be judged by what the Defendant in good faith honestly believed and had reasonable grounds to believe was necessary to avoid apprehended death or great bodily injury.

K - 3.32. Self-Defense (After Provocation) 1985

A person is justified in using force upon another to defend oneself against danger of imminent unlawful bodily injury, sexual assault, or detention by the other person. One is not justified in using force if one causes bodily injury or death to the other person and had intentionally provoked the danger defended against has entered into mutual combat with another person or is the initial aggressor, unless resisting force that is clearly excessive in the circumstances. A person's use of defensive force is justified if, after one withdraws from an encounter and has indicated to the other person that one has done so, the other person nevertheless continues or menaces unlawful action.

K - 3.80. Excuse (Necessary and Appropriate Conduct) 2013

A person's conduct is excused if the person believes that the facts are such that the conduct is necessary and appropriate, even though that belief is mistaken. The reasonableness of the excuse must be determined from the viewpoint of a person in that situation under the circumstances as the person believes them to be.

Defense of Others

A person is justified in using force upon another in order to defend anyone else if the one defended would be justified to act in self-defense and the person coming to the defense has not, by provocation or otherwise, forfeited the right of self-defense.

K - 3.50. Use of Force in Defense of Premises and Property 1985

Force is justified if it is used by a person to prevent or terminate an unlawful entry or other trespass in or upon premises to prevent an unlawful carrying away or damaging of property; however, force is not justified unless the person using force first requests the person against whom force is to be used to desist from interference with the premises or property, but a request is not necessary if it would be useless or dangerous to make the request substantial damage would be done to the property sought to be protected before the request could effectively be made.

K - 3.52. Use of Deadly Force Presumption of Fear of Death or Serious Bodily Injury 2011

A person is presumed to have held a reasonable fear of imminent death or serious bodily injury to himself or another when using deadly force if:

- a. The person against whom the deadly force was used was in the process of unlawfully and forcibly entering, had unlawfully and forcibly entered and remains within, or had removed or was attempting to remove another against his will from a dwelling place of work, or occupied motor home or travel trailer; and
- b. The person who uses deadly force knew or had reason to believe that an [unlawful and forcible entry, or unlawful and forcible act was occurring or had occurred.

This presumption may be rebutted by proof beyond a reasonable doubt that the person who used the deadly force did not have a reasonable fear of imminent death or serious bodily injury to himself or another.

This presumption does not apply if:

The person against whom the deadly force was used had the right to be in or is a lawful resident of the, dwelling, place of work, or occupied motor home or travel trailer, 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 the person against whom deadly force was used.

The person removed or sought to be removed is a child, a grandchild, or is otherwise in the lawful custody or under the lawful guardianship of the person against whom deadly force was used.

The person who uses deadly force was engaged in the commission of a crime, or using the dwelling, place of work, or occupied motor home, or travel trailer to further the commission of a crime.

The person against whom deadly force was used was a law enforcement officer who entered or attempted to enter a dwelling, place of work, occupied motor home, or travel trailer in the performance of official duties and provided identification, if required, in accordance with any applicable law or warrant from a court, or if the person using force knew or reasonably should have known that the person against whom the deadly force was used was a law enforcement officer.

Limits on Use of Excessive or Deadly Force 2011

The duty to retreat or avoid using deadly force does not apply under the following circumstances:

1) Water drainage, section line, fence, or livestock at large disputes between landowners; bar fights; street dances and sporting event tailgate parties; remote child custody exchange locations; or any other place the individual has a lawful right to be during a dispute with another;

2) The individual or their witnesses claim the deceased provoked them;

3) The individual is not doing anything illegal that would require someone to use deadly force against them;

4) If the dispute between people involves a fist fight, and the individual or their witnesses claim the deceased was the initial aggressor or was using or threatening excessive force under the circumstances, the individual is authorized to use deadly force even if they could safely retreat.

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF SHERIDAN

SOUTH CENTRAL JUDICIAL DISTRICT

State of North Dakota,

Sheridan County Cr. #

Plaintiff,

-vs-

INFORMATION

Defendant.

¶1 THE PROSECUTING ATTORNEY OF SHERIDAN COUNTY, CHARGES that:

On or before the 10th day of November, 2020, in Sheridan County, ND the above-named

Defendant committed the offense of:

TERRORIZING in violation of N.D.C.C. § 12.1-17-04(1) by then and there: With intent to place another human being in fear for that human being's or another's safety, or in reckless disregard of the risk of causing such terror threatened to commit any crime of violence or act dangerous to human life.

To-wit: The defendant terrorized with threatening words, gestures and a handgun.

Penalty Section: N.D.C.C. § 12.1-17-04
Class C Felony

¶2 Against the peace and dignity of the State of North Dakota.

¶3 DATED: This 12 day of November, 2020.

Ladd R. Erickson by Lorian K. Rittstedt
Ladd R. Erickson
Prosecuting Attorney

¶4 Based on the attached affidavit, the Court finds probable cause to initially charge the Defendant with the offense on:

Signed: 11/12/2020 1:58:42 PM
BY THE COURT:

Jama S. Jive
District Court Judge

State's Witnesses:

STATE OF NORTH DAKOTA

)

)

SS

COUNTY OF SHERIDAN

)

AFFIDAVIT

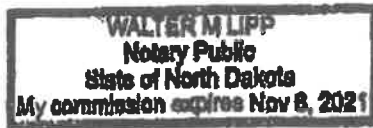
, being first duly sworn, deposes and states as follows:

1. I am the Sheriff of Sheridan County North Dakota and make this affidavit in that capacity.
2. On November 10, 2020 at approximately 2030 hours I received a call that located a vehicle parked in an approach at 12th St NW and 5th Ave NW in rural Sheridan County. thought it was strange that a vehicle was parked there with its lights on so he stopped.
3. A short time after he stopped a male described as approximately in his 50's got out of the vehicle and walked towards . asked the male "what's going on". The male was on his cell phone and as he got close to he started waving a handgun (described as a revolver with about a 4" barrel) and told "you best keep moving" and . then immediately left.
4. , then called his mother and told her and then we were called. had said he was very scared when the man had pointed the gun at him.
5. When we arrived in the area a short time later we started looking for the vehicle that . had described (which was a newer Ford F350, white in color, that had quite a few lights on it and possibly a flatbed).
6. A while later we located a vehicle that matched that vehicle description in a pasture a short distance north of where had said he had seen it.
7. After a while of giving the driver verbal commands to exit the vehicle, a male did exit the vehicle.
8. A loaded 357 Smith and Wesson revolver was recovered from the driver and that handgun matched the description of the gun that had seen.
9. The male was identified as. (DOB () and based on the foregoing he was placed under arrest for Terrorizing (NDCC 12.1-17-04).

Dated: November 11, 2020

, Sheriff

Subscribed and sworn before me on the 11th day of November, 2020.



Walter M. Lipp

Notary Public

Sheridan County, North Dakota



Susan Beehler <suzybbuzz@gmail.com>

Good morning Chairman Larson and members of the Senate judiciary committee

1 message

Shop Suzyb <suzyb@shopsuzyb.com>

Tue, Apr 6, 2021 at 6:38 AM

To: Susan Beehler <suzybbuzz@gmail.com>

Good morning Chairman Larson and members of the Senate judiciary committee

Testimony HB1498

My name is Susan Beehler a mother of 5, a grandmother of 3. I was born in North Dakota, a life long resident of North Dakota, a Mandan resident for almost 30 years, District 31, a small business owner, a former Girl Scout leader, camp director, camp cook, youth church director, camp director, camp cook, a domestic violence shelter advocate, a survivor of domestic violence not by my husband but my father.

I am opposed to HB 1498. I urge a do not pass.

I am opposed to removing civil liability. If someone pulls a gun on me or any family member in a property dispute and they are doing so to bully or intimidate then the party threatened or shot should be able to seek civil remedy if they choose. I am not an attorney so I don't know. The bill states civil action so would this also include protection orders or recklessness, negligence?

In the section page 2 starting on line 25, as a survivor of domestic violence, an abuser feels they have the right or are entitled to commit violence against another. This section gives them immunity. This puts family members in a even more dangerous position. As a advocate for domestic violence victims and survivors I have seen abusers threaten the use of violence over a perceived threat or shared property, this bill gives a abuser permission and little accountability.

The very last portion of granting immunity for threaten in your home is particular scary in a domestic situation.

I have been testifying since 2013 to a long string of bills which have loosened our gun laws with the most hashing over being able to have a loaded firearm anywhere and it seems like everywhere. I often hear scenarios of an unknown assailant coming into a home and the proliferation of our long-standing laws is being justified by the fear of this unknown intruder.

Looking to the crime reports from our ND Attorney General's office this is not the reality of the murders happening in our state. The reality is the victims know their killer.

Looking at the Homicide report for 2018 P2

<https://attorneygeneral.nd.gov/sites/ag/files/documents/2018-HomicideReport.pdf>

P. 7 a handgun was used in more of those murders in 2018 then since 1999.

Is this a correlation to the relaxing of our gun laws?

P. 10 of the report of the murders involved domestic violence, a husband, a family member, a boyfriend committing the murder.

P. 11 & 13 An adult male is doing most of the killing.

In the Report for 2019 P4

<https://attorneygeneral.nd.gov/sites/ag/files/documents/2019-HomicideReport.pdf>

Our state has had the most murders since 2000. Has the change in laws made us safer or less safe? Since most of the killings are women. These changes to the law do not make me as a woman feel safer. It seems it has made it easier for the assailant to obtain their weapon of choice, a firearm.

P. 13 most murders occur in the residence/home.

The boogie man is not a stranger.

The scenarios of the women needing protection from some random assailant is not the North Dakota reality.

The reality is their is blood running in our homes

P29 we have had a 75% increase in murder.

Will this Bill make our homes safer? You have been elected to make laws that protect all our citizens and insure our rights are protected. Dead women no longer have rights, so when you vote are you protecting those most likely to be murdered by a firearm or making it easier for them to be killed?

Testimony on HB 1498**6 April 2021**

Good morning Madame chairwoman and members of the committee. My name is Cheryl Biller. I am from Fargo and I speak today in opposition to HB 1498.

ND currently has laws that allow for the use of force, including lethal force, in defense of self. This bill, should it become law, doesn't close any loopholes. It doesn't fill in any gaps, nor does it clarify any language. In a country where you are 25 times more likely to die of gun violence than our peer nations, this bill will exacerbate that statistic – with no data to support the assertion that it will deter crime.

Other states have enacted laws similar to this one, so we know what the results will be. Data in an article from the Journal of the American College of Surgeons shows that laws enacted by passage of bills like this are associated with an increase in homicide rates such that we see 150 more gun deaths each month in the US. When Florida passed its stand your ground law, there was a 32% increase in firearm homicides rates. The overall rate of homicide also went up 24% when this law was passed.

Not surprisingly, in addition to more people being killed with guns and by other means, laws like this encourage an escalation in violence in situations where that violence could be diffused without someone dying. An analysis of cases in FL where the stand your ground defense was used, defendants in 79% of the cases could have safely avoided the confrontation but chose to shoot instead. In 68% of those cases, the person killed was unarmed. The Tampa Bay Times looked at cases where this defense was used in a homicide trial and found that more than half, 60%, of those who use this defense have been arrested at least once before they killed someone; and about a third of those defendants have been accused of violent crimes including assault, battery, and robbery.

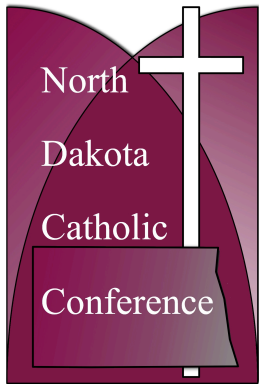
Where these laws exist – homicides go up, violence escalates, and to complete this unhealthy trifecta, the data also shows a disproportionate impact on communities of color. An FBI analysis of data shows that when white shooters kill black victims, the resulting homicides are deemed justified far more often than when the shooter is black and the victim is white. Controlling for other factors—such as who initiated the confrontation and whether or not the victim was armed—Florida Stand Your Ground cases with minority victims are half as likely to lead to conviction, compared to cases with white victims.

I say again – there is no data that supports the assertion that laws like this bill would create actually deter crime.

Let me leave you with this last note – a prayer really. You all, in this legislative session, passed a bill that would allow for display of a religious document, the 10 commandments, in public school classrooms. I presume, then, that you believe our children should be taught to follow the tenets laid out in that display. One of those commandments, as I'm sure you are aware, is Thou Shalt Not Kill. How can our children be expected to appreciate the value of human life if we subsequently say to them that it is fine to kill someone you are afraid of, even if you are able to avoid confronting them and even if they are in fact not actually a threat to you? How do they appreciate the laws of this country if we say it is not okay to kill people - unless you are afraid, then you get to be the judge, jury, and executioner? I am sure you see the disconnect here – passing one law that say we will teach our children not to kill and passing another that allows us to kill each other.

I pray you have a consistent set of values and understand how important it is to consistently apply those values. If that is so, you will surely give a do not pass recommendation to HB 1498.

Thank you for your time today-



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

103 South Third Street
Suite 10
Bismarck ND 58501
701-223-2519
ndcatholic.org
ndcatholic@ndcatholic.org

To: Senate Judiciary Committee
From: Christopher Dodson, Executive Director
Subject: HB 1498 - Use of Deadly Force
Date: April 6, 2021

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 they 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 even then, 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 wrong. 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

House Bill 1498 contradicts these fundamental moral principles. 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

Senator,

Please vote for this bill!

I carry all the time and never have had to use a weapon but if the need arises law or no law I will NEVER retreat!

I will NEVER retreat from anywhere if my property or life is being threatened by a criminal!

With or without this law I will use deadly force if needed and I will not be giving any one pointing a gun at me a second chance to retreat much less a first one.

Just as with DV allegations are if a person FEELS they are in danger I will use any means necessary to defend my property and person!!!!

Thank you,

--

Mitchell S. Sanderson

HB 1498

relating to brandishing a dangerous weapon; and relating to justification, use of force in defense of property, limits on the use of force and deadly force, and immunity from civil liability.

Regarding this bill and its key issues would first come Security and next would be safety. If you do not know the person don't let them in your house. Use the latest alarm systems and home technologies to your advantage. These would be safer alternatives then using a firearm. I especially, do not an open season on ND resident.

Safety is the key issue here and many restrictions would be needed. There is no data supporting that this bill would deter crime. If the legislature keeps chipping away at these gun laws ND would turn back into the wild west as now more than ever citizens safety is the main concern with the rash of recent shootings in the metro area.

I'm strongly against this bill, as a veteran myself. I have many insecurities and can only speak for myself. I feel safe at home with my RING doorbell and my doors locked at night. Recently, my family and I went through a shelter in place in West Fargo. We locked and secured all the doors and windows. I did not once think of going to get my gun. We need safer gun laws not ones that bring a poor reflection on the ND citizen.

Thanks,

Chris Deery

April 5, 2021
Testimony of Kari Breker
AGAINST HB 1498

Dear Members of the Senate Judiciary Committee,

My name is Kari Breker and I live in West Fargo in District 16. I am testifying today in opposition of HB 1498.

HB 1498 is a traditional Stand Your Ground Bill. This bill removes any responsibility, on the part of a ND resident, from trying to retreat from a situation before using lethal force with a gun - even if they can safely walk away from danger. Bills like these have been PROVEN to increase gun violence and gun deaths and it disproportionately negatively affects people of color. This is essentially the legal justification that Trayvon Martin's killer used to justify his murder. To remind you who Trayvon Martin was - he was an UNARMED 17-year-old black boy from Florida. He was walking back home from a convenience store after buying a drink and some candy with his sweatshirt hood pulled over his head. He was fatally shot by a man named George Zimmerman who reported a "suspicious person" in the neighborhood to 911 dispatch. He reported he had been following Trayvon because he looked like he was "up to no good or he's on drugs or something." He was instructed to not approach the boy, but did anyway and moments later gunshots were heard by neighbors. George claimed "self defense" but there is little evidence to back up that claim as nobody saw what actually happened in the moment. The jury acquitted Zimmerman with the consideration of their Stand Your Ground laws.

We should NEVER make it easier to kill someone when there is an option to leave the situation. Thou shall not kill, right? Some of you may be thinking that this tragedy could never happen to you or anybody you love. I bet you are thinking having laws like Stand Your Ground laws in place ultimately protect you and your family from intruders or people on your property. While I can understand that mindset, there are still laws in place that protect someone who needs to attack in genuine self defense. Our current laws are sufficient. I'm going to share a quick story. I had a friend in college who was newly 21 years old. He had been out at the bars all night, was heavily intoxicated, and at bar close he decided to walk home instead of get into a car. He was so intoxicated that he accidentally walked into an unlocked home that was not his and fell asleep on their couch. The owner found him there, quickly got him out of his home, and thankfully didn't shoot him. Under this law he'd have been legally allowed to shoot and kill this college student who had trespassed into his home. This young man has now grown up to be a very successful business man, father of 3 beautiful children and remains a kind and fun person to be around. Did he deserve to be killed for his mistake as a young college student who made a poor choice when intoxicated? I certainly don't believe so. This could be my child someday and it could be your child or grandchildren as well. Gun violence in North Dakota is increasing and instead of making it legally easier to shoot people, we need to focus more on how to make North Dakota a safer place while also allowing responsible gun ownership. Let's work together to find solutions that work instead of continuing to increase gun violence. Please vote NO on HB 1498.

Sincerely,

Kari Breker
West Fargo, ND 58078

killing 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.

The iteration of this bill appears to keep the duty to retreat while merely changing the circumstances in which Castle Doctrine applies. In truth, however, the bill essentially eliminates the Castle Doctrine and replaces it with an exception that swallows the rule.

The new language removes the Castle Doctrine and replaces it with an “everywhere” doctrine. The only limitation is that the person must not be engaged in unlawful activity and must be where they are allowed to be. Essentially, it says that “good guys” can use deadly force and that “bad guys” cannot. The enforcement problem with this is that, legally, there are no good guys or bad guys until it has been determined by law.

A more fundamental problem, however, is that negates the basic moral principles stated above. Intentionally killing a wrongdoer is also always wrong. 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. HB 1498 essentially eliminates the duty to retreat in situations other than dwellings and work and, therefore, would allow the use of deadly force when it is not needed for self-defense.

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 because escape was presumed not possible in the dark, but killing an intruder during the day was not acceptable because escaping was possible in daylight.

Senate Judiciary

HB 1498

Chairman Larson, I urge a DO PASS on House Bill 1498

This bill will ensure that North Dakota citizens have a reasonable opportunity to exercise their Constitutional right to protect themselves as afforded by the Second Amendment in a way that is reasonable and not reckless. Please support a DO PASS on HB 1498.

Thank You

Gordon Greenstein

US Navy (Veteran)

US Army (Retired)

ND Senate Judiciary Committee Testimony Relative To House Bill 1498 – April 5, 2021

Chairman Larson and members of the Senate Judiciary Committee,

I submit this testimony in support of HB1498.

As a resident of ND, I am increasingly alarmed by the suspicious, and I would safely venture to say, nefarious intent of predators happening not only in dimly lit parking lots, but in broad daylight and in busy places of business within our communities. These increased occurrences demand attention and action in support of the protection of law-abiding citizens.

I support immunity from civil liability for justifiable use of force and feel that justifiable uses of force could and should be broadened. Laws should not protect the rights of an aggressor, a criminal, or a predator, above a law-abiding citizen.

I appreciate the clarity that the revisions in HB1498 make to the state century code. I further appreciate that the former limiting, allowable areas of acceptable retreat are more broadly defined as they relate to more real-life scenarios as illustrated in the shared examples below.

Woman warning of another unsettling incident in Fargo parking lot - By Bailey Hurley

Published: Feb. 8, 2021 at 6:12 PM CST

<https://www.valleynewslive.com/2021/02/09/woman-warning-of-another-unsettling-incident-in-fargo-parking-lot/>

Two women warn of unsettling situations at Fargo stores - By Bailey Hurley

Published: Jan. 29, 2021 at 5:49 PM CST

<https://www.valleynewslive.com/2021/01/29/two-women-warn-of-unsettling-situations-at-fargo-stores/>

Public Facebook post - January 28, 2021 at 12:58pm

I was at Barnes and Noble today and noticed a man staying near my girls and I. We went and had a treat at their cafe and he continued to stick close by. On our way to the check out, I noticed two other men with their phones out, occasionally looking at me. All of them were wandering the store and seemed to not be looking at any specific books, etc... two of them left the store. One was standing by the door and the other by some vehicles. The third guy was still wandering the store and saw me at the check out. I informed management and had someone walk me to my vehicle. The two gentlemen who were outside saw that I had someone with me. They met up outside the store and went back in. I followed up with management afterwards and she said she confronted them and asked them to leave. 5 gentlemen and a women left together and all got in to one van. I may have been paranoid but I'd rather be safe than sorry... Please pay attention to your surroundings. This has put me into a bit of a tizzy today. Pay attention when you are out and about.

I will point out that these articles are dated from earlier this year, but one would have to be turning a blind eye to the even more recent occurrences of crime escalating in Fargo and across the state. If the trend continues, and there is sure evidence of it doing just that, wouldn't you want your loved ones to

have the ability to protect themselves and a law to ensure that protection? I would. I would want it for your loved ones just as I would want it for myself and mine.

I urge a do pass recommendation on HB 1498. Thank you for considering this testimony in support of this bill.

Bridget Ertelt
Fargo, ND 58103

Although a supporter of the Second Amendment, I am also a supporter of a civilized world. At one time the "West" was found to have the majority of men walking around with guns strapped to their waists. Civilization – where one can walk without any fear, without worrying that one word you say can be attacked by "gun power" came because "Civilized" people realized that power should not rely on force (bullets). It truly looks to those of us who have no party affiliation (Am an Independent) that the GOP is attempting to roll back the clock and eliminate civilization. Have no concern for those of us who do not own &/or carry guns are put in a situation where we walk in fear. Apparently "he-men" feel that their superiority must be on display by having the ability to walk with guns and use guns without proper control. This allows almost any excuse to use fatal force. Please vote NO!

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

HB 1498
4/7/2021

A BILL for an Act to create and enact a new section to chapter 62.1-02 of the North Dakota Century Code, relating to brandishing a dangerous weapon; and to amend and reenact sections 12.1-05-01, 12.1-05-06, 12.1-05-07, and 12.1-05-07.2 of the North Dakota Century Code, relating to justification, use of force in defense of property, limits on the use of force and deadly force, and immunity from civil liability.

Hearing called to order all Senators Present: **Myrdal, Luick, Dwyer, Bakke, Fors, Heitkamp, Larson. [9:00]**

Discussion Topics:

- Stand your ground uniformity
- 2nd amendment self-defense protections

Senator Dwyer Moved Amendment
21.0667.03001 [9:11]
Senator Luick Seconded the Motion
Vote Passed 4-3-0

Vote to Amend HB 1498	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	N
Senator Jason G. Heitkamp	N
Senator Larry Luick	Y
Senator Janne Myrdal	N

Senator Myrdal Moved a DO PASS AS AMENDED [9:25]
Senator Luick Seconded the Motion
Vote Passed 5-2-0
Senator Myrdal Carried the Bill

DO PASS AS AMENDED On HB 1498	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	N
Senator JoNell A. Bakke	N
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Hearing Adjourned [9:26]

Jamal Omar, Committee Clerk

April 7, 2021

CS
4/7/21
1061

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1498

Page 1, line 3, remove "12.1-05-01,"

Page 1, line 4, remove "justification,"

Page 1, remove lines 7 through 16

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1498, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1498 was placed on the Sixth order on the calendar.

Page 1, line 3, remove "12.1-05-01,"

Page 1, line 4, remove "justification,"

Page 1, remove lines 7 through 16

Renumber accordingly