

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

HOUSE BILL NO. 1319
(Representatives Porter, Carlisle, Klemin, S. Meyer)
(Senators Holmberg, Potter)

AN ACT to create and enact two new sections to chapter 12.1-05 of the North Dakota Century Code, relating to the use of and liability for deadly force; and to amend and reenact section 12.1-05-07 of the North Dakota Century Code, relating to the use of deadly force.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. ~~A person~~ An individual is not justified in using more force than is necessary and appropriate under the circumstances.
2. Deadly force is justified in the following instances:
 - a. When it is expressly authorized by law or occurs in the lawful conduct of war.
 - b. When used in lawful self-defense, or in lawful defense of others, if such force is necessary to protect the actor or anyone else against death, serious bodily injury, or the commission of a felony involving violence. The use of deadly force is not justified if it can be avoided, with safety to the actor and others, by retreat or other conduct involving minimal interference with the freedom of the ~~person~~ individual menaced. ~~A person~~ An individual seeking to protect ~~someone else~~ another individual must, before using deadly force, try to cause ~~that person~~ the other individual to retreat, or otherwise comply with the requirements of this provision, if safety can be obtained thereby. ~~But, (1) a~~ However, the duty to retreat or avoid force does not apply under the following circumstances:
 - (1) A public servant justified in using force in the performance of his the public servant's duties or a person an individual justified in using force in his assistance assisting the public servant need not desist from his the public servant's or individual's efforts because of resistance or threatened resistance by or on behalf of the person other individual against whom his the public servant's or individual's action is directed; and (2) no person
 - (2) An individual is not required to retreat within or from his that individual's dwelling or place of work or from an occupied motor home or travel trailer as defined in section 39-01-01, unless he the individual was the original aggressor or is assailed by a person another individual who he the individual knows also dwells or works there or who is lawfully in the motor home or travel trailer.
 - c. When used by ~~a person~~ an individual in possession or control of a dwelling ~~or~~ or place of work, or ~~a person~~ an occupied motor home or travel trailer as defined in section 39-01-01, or by an individual who is licensed or privileged to be there, if ~~such~~ the force is necessary to prevent commission of arson, burglary, robbery, or a felony involving violence upon or in the dwelling ~~or~~ or place of work, or occupied motor home or travel trailer, and the use of force other than deadly force for ~~such~~ these purposes would expose ~~anyone~~ any individual to substantial danger of serious bodily injury.

- d. When used by a public servant authorized to effect arrests or prevent escapes, if ~~such~~ the force is necessary to effect an arrest or to prevent the escape from custody of ~~a person~~ an individual who has committed or attempted to commit a felony involving violence, or is attempting to escape by the use of a deadly weapon, or has otherwise indicated that ~~he~~ the individual is likely to endanger human life or to inflict serious bodily injury unless apprehended without delay.
- e. When used by a guard or other public servant, if ~~such~~ the force is necessary to prevent the escape of a prisoner from a detention facility, unless ~~he~~ the guard or public servant knows that the prisoner is not ~~such a person~~ an individual as described in subdivision d. A detention facility is any place used for the confinement, pursuant to a court order, of ~~a person~~ (1) an individual charged with or convicted of an offense; ~~or (2),~~ charged with being or adjudicated a juvenile delinquent; ~~or (3),~~ held for extradition; ~~or (4)~~ otherwise confined ~~pursuant to~~ under court order.
- f. When used by a duly licensed physician, or ~~a person~~ an individual acting at ~~his~~ the physician's direction, if ~~such~~ the force is necessary to administer a recognized form of treatment to promote the physical or mental health of a patient and if the treatment is administered ~~(1)~~ (1) in an emergency; ~~(2)~~ (2) with the consent of the patient, or, if the patient is a minor or an incompetent person, with the consent of ~~his~~ the patient's parent, guardian, or other person entrusted with ~~his~~ the patient's care and supervision; or ~~(3)~~ (3) by order of a court of competent jurisdiction.
- g. When used by ~~a person~~ an individual who is directed or authorized by a public servant, and who does not know that, ~~if such is the case,~~ the public servant is ~~himself~~ not authorized to use deadly force under the circumstances.

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

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

1. An individual is presumed to have held a reasonable fear of imminent peril of death or serious bodily injury to that individual or another when using deadly force if:
 - a. The individual against whom the deadly force was used was in the process of unlawfully and forcibly entering, or had unlawfully and forcibly entered and remains within a dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01, or if the individual had removed or was attempting to remove another against that individual's will from the dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01; and
 - b. The individual 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.
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 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 was a law enforcement officer.
- 2. The court shall award reasonable attorney's fees and court costs and disbursements incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from civil liability as provided in subsection 1.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1319.

House Vote: Yeas 80 Nays 13 Absent 1

Senate Vote: Yeas 44 Nays 2 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

Governor

Filed in this office this _____ day of _____, 2007,

at _____ o'clock _____ M.

Secretary of State