

SENATE BILL NO. 2315

Introduced by

Senators Clemens, O. Larsen, Vedaa

Representative Ertelt

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 an
11 unlawful carrying away or damaging of property if:

- 12 1. The individual would be justified in using force against the another individual under
13 section 12.1-05-06;
- 14 2. When and to the degree the individual reasonably believes the deadly force is
15 immediately necessary:
 - 16 a. To prevent the other individual's imminent commission of arson, burglary, robbery,
17 aggravated robbery, theft, or criminal mischief; or
 - 18 b. To prevent the other individual who is fleeing immediately after committing
19 burglary, robbery, aggravated robbery, or theft from escaping with the property; or
- 20 3. The individual reasonably believes the use of force other than deadly force to protect
21 or recover the property would expose the actor or another individual to a substantial
22 risk of death or serious bodily injury.

23 **SECTION 2. AMENDMENT.** Section 12.1-05-07 of the North Dakota Century Code is
24 amended and reenacted as follows:

1 **12.1-05-07. Limits on the use of force --Excessive force - Deadly force.**

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

4 2. Deadly force is justified in the following instances:

5 a. When it is expressly authorized by law or occurs in the lawful conduct of war.

6 b. When used in lawful self-defense, or in lawful defense of others, if such force is
7 necessary to protect the actor or anyone else against death, serious bodily injury,
8 or the commission of a felony involving violence. ~~The use of deadly force is not
9 justified if it can be avoided, with safety to the actor and others, by retreat or
10 other conduct involving minimal interference with the freedom of the individual
11 menaced. An individual seeking to protect another individual must, before using
12 deadly force, try to cause the other individual to retreat, or otherwise comply with
13 the requirements of this provision, if safety can be obtained thereby. However, the
14 duty to retreat or avoid force does not apply under the following circumstances:~~

15 (1) A public servant justified in using force in the performance of the public
16 servant's duties or an individual justified in using force in assisting the public
17 servant need not desist from the public servant's or individual's efforts
18 because of resistance or threatened resistance by or on behalf of the other
19 individual against whom the public servant's or individual's action is
20 directed; and

21 (2) An individual is not required to retreat within or from that individual's
22 dwelling or place of work or from an occupied motor home or travel trailer as
23 defined in section 39-01-01, unless the individual was the original aggressor
24 or is assailed by another individual who the individual knows also dwells or
25 works there or who is lawfully in the motor home or travel trailer.

26 c. When used by an individual in possession or control of a dwelling, place of work,
27 or an occupied motor home or travel trailer as defined in section 39-01-01, or by
28 an individual who is licensed or privileged to be there, if the force is necessary to
29 prevent commission of arson, burglary, robbery, theft, damage to property, or a
30 felony involving violence upon or in the dwelling, place of work, or occupied
31 motor home or travel trailer, and the use of force other than deadly force for these

- 1 purposes would expose any individual to substantial danger of serious bodily
2 injury.
- 3 d. When used by a public servant authorized to effect arrests or prevent escapes, if
4 the force is necessary to effect an arrest or to prevent the escape from custody of
5 an individual who has committed or attempted to commit a felony involving
6 violence, or is attempting to escape by the use of a deadly weapon, or has
7 otherwise indicated ~~that~~ the individual is likely to endanger human life or to inflict
8 serious bodily injury unless apprehended without delay.
- 9 e. When used by a guard or other public servant, if the force is necessary to prevent
10 the escape of a prisoner from a detention facility, unless the guard or public
11 servant knows ~~that~~ the prisoner is not an individual as described in subdivision d.
12 A detention facility is any place used for the confinement, pursuant to a court
13 order, of an individual charged with or convicted of an offense, charged with
14 being or adjudicated a juvenile delinquent, held for extradition, or otherwise
15 confined under court order.
- 16 f. When used by a duly licensed physician, or an individual acting at the physician's
17 direction, if the force is necessary to administer a recognized form of treatment to
18 promote the physical or mental health of a patient and if the treatment is
19 administered in an emergency; with the consent of the patient, or, if the patient is
20 a minor or an incompetent person, with the consent of the patient's parent,
21 guardian, or other person entrusted with the patient's care and supervision; or by
22 order of a court of competent jurisdiction.
- 23 g. When used by an individual ~~who~~ is directed or authorized by a public servant,
24 and who does not know ~~that~~ the public servant is not authorized to use deadly
25 force under the circumstances.