

**HOUSE BILL NO. 1319**

Introduced by

Representatives Porter, Carlisle, Klemin, S. Meyer

Senators Holmberg, Potter

1 A BILL for an Act to create and enact two new sections to chapter 12.1-05 of the North Dakota  
2 Century Code, relating to the use of and liability for deadly force; and to amend and reenact  
3 section 12.1-05-07 of the North Dakota Century Code, relating to the use of deadly force.

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

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

7 **12.1-05-07. Limits on the use of force - Excessive force - Deadly force.**

8 1. ~~A person~~ An individual is not justified in using more force than is necessary and  
9 appropriate under the circumstances.

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

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

12 b. When used in lawful self-defense, or in lawful defense of others, if ~~such~~ the  
13 force is necessary to protect the actor or anyone else against death, serious  
14 bodily injury, or the commission of a felony involving violence. ~~The use of~~  
15 ~~deadly force is not justified if it can be avoided, with safety to the actor and~~  
16 ~~others, by retreat or other conduct involving minimal interference with the~~  
17 ~~freedom of the person menaced. A person seeking to protect someone else~~  
18 ~~must, before using deadly force, try to cause that person to retreat, or~~  
19 ~~otherwise comply with the requirements of this provision, if safety can be~~  
20 ~~obtained thereby. But, (1) a public servant justified in using force in the~~  
21 ~~performance of his duties or a person justified in using force in his assistance~~  
22 ~~need not desist from his efforts because of resistance or threatened~~  
23 ~~resistance by or on behalf of the person against whom his action is directed;~~  
24 ~~and (2) no person is required to retreat from his dwelling or place of work~~

- 1                    ~~unless he was the original aggressor or is assailed by a person who he knows~~  
2                    ~~also dwells or works there.~~ An individual does not have the duty to retreat if  
3                    the individual is in a place where that individual has a right to be.
- 4                    c. When used by ~~a person~~ an individual in possession or control of a dwelling ~~or,~~  
5                    place of work, or a ~~person~~ vehicle, or by an individual who is licensed or  
6                    privileged to be there, if ~~such~~ the force is necessary to prevent commission of  
7                    arson, burglary, robbery, or a felony involving violence upon or in the dwelling  
8                    ~~or,~~ place of work, or vehicle, and the use of force other than deadly force for  
9                    ~~such~~ these purposes would expose ~~anyone~~ any individual to substantial  
10                    danger of serious bodily injury.
- 11                    d. When used by a public servant authorized to effect arrests or prevent  
12                    escapes, if ~~such~~ the force is necessary to effect an arrest or to prevent the  
13                    escape from custody of ~~a person~~ an individual who has committed or  
14                    attempted to commit a felony involving violence, or is attempting to escape by  
15                    the use of a deadly weapon, or has otherwise indicated that ~~he~~ the individual  
16                    is likely to endanger human life or to inflict serious bodily injury unless  
17                    apprehended without delay.
- 18                    e. When used by a guard or other public servant, if ~~such~~ the force is necessary  
19                    to prevent the escape of a prisoner from a detention facility, unless ~~he~~ the  
20                    guard or public servant knows that the prisoner is not ~~such a person~~ an  
21                    individual as described in subdivision d. A detention facility is any place used  
22                    for the confinement, pursuant to a court order, of ~~a person~~ (1) an individual  
23                    charged with or convicted of an offense; ~~or (2),~~ charged with being or  
24                    adjudicated a juvenile delinquent; ~~or (3),~~ held for extradition; ~~or (4)~~ otherwise  
25                    confined ~~pursuant to~~ under court order.
- 26                    f. When used by a duly licensed physician, or ~~a person~~ an individual acting at  
27                    ~~his~~ the physician's direction, if ~~such~~ the force is necessary to administer a  
28                    recognized form of treatment to promote the physical or mental health of a  
29                    patient and if the treatment is administered ~~(1)~~ in an emergency; ~~(2)~~ with the  
30                    consent of the patient, or, if the patient is a minor or an incompetent person,  
31                    with the consent of ~~his~~ the patient's parent, guardian, or other person

1 entrusted with ~~his~~ the patient's care and supervision; or ~~(3)~~ by order of a court  
2 of competent jurisdiction.

3 g. When used by ~~a person~~ an individual who is directed or authorized by a public  
4 servant, and who does not know that, ~~if such is the case,~~ the public servant is  
5 ~~himself~~ not authorized to use deadly force under the circumstances.

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

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

9 1. An individual is presumed to have held a reasonable fear of imminent peril of death  
10 or serious bodily injury to that individual or another when using deadly force if:

11 a. The individual against whom the defensive force was used was in the process  
12 of unlawfully and forcibly entering, or had unlawfully and forcibly entered a  
13 dwelling or occupied vehicle, or if the individual had removed or was  
14 attempting to remove another against that individual's will from the dwelling or  
15 occupied vehicle; and

16 b. The individual who uses defensive force knew or had reason to believe that  
17 an unlawful and forcible entry or unlawful and forcible act was occurring or  
18 had occurred.

19 2. The presumption does not apply if:

20 a. The individual against whom the defensive force is used has the right to be in  
21 or is a lawful resident of the dwelling or vehicle, including an owner, lessee, or  
22 titleholder, and there is not an injunction for protection from domestic violence  
23 or a written pretrial supervision order of no contact against that individual;

24 b. The individual sought to be removed is a child or grandchild, or is otherwise in  
25 the lawful custody or under the lawful guardianship of, the individual against  
26 whom the defensive force is used;

27 c. The individual who uses defensive force is engaged in an unlawful activity or  
28 is using the dwelling or occupied vehicle to further an unlawful activity; or

29 d. The individual against whom the defensive force is used is a law enforcement  
30 officer who enters or attempts to enter a dwelling or vehicle in the  
31 performance of official duties and the officer provided identification in

1                   accordance with any applicable law or the individual using force knew or  
2                   reasonably should have known that the individual entering or attempting to  
3                   enter was a law enforcement officer.

4           3. An individual who unlawfully and by force enters or attempts to enter a dwelling or  
5           occupied vehicle is presumed to be doing so with the intent to commit a felony  
6           involving violence.

7           **SECTION 3.** A new section to chapter 12.1-05 of the North Dakota Century Code is  
8 created and enacted as follows:

9           **Immunity from criminal prosecution and civil action for justifiable use of force.**

10          1. An individual who uses force as permitted under this chapter is justified in using  
11          force and is immune from criminal prosecution and civil liability for the use of the  
12          force unless the individual against whom force was used is a law enforcement  
13          officer who was acting in the performance of official duties and the officer provided  
14          identification in accordance with any applicable law or the individual using force  
15          knew or reasonably should have known that the individual was a law enforcement  
16          officer. As used in this subsection, the term "criminal prosecution" includes  
17          arresting, detaining in custody, and charging or prosecuting the defendant.

18          2. A law enforcement agency may use standard procedures for investigating the use  
19          of force as described in subsection 1, but the agency may not arrest the individual  
20          for using force unless it determines that there is probable cause that the force that  
21          was used was unlawful.

22          3. The court shall award reasonable attorney's fees, court costs, compensation for  
23          loss of income, and all expenses incurred by the defendant in defense of any civil  
24          action brought by a plaintiff if the court finds that the defendant is immune from  
25          prosecution or civil liability as provided in subsection 1.