



2021 South Dakota Legislature

House Bill 1212

Introduced by: **Representative** Kevin Jensen

1 **An Act to clarify the use of force.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1.** That a NEW SECTION be added:

4 **22-18-3.1. Definitions.**

5 Terms used in §§ 22-18-4 to 22-18-4.9, inclusive, mean:

6 (1) "Deadly force," force that is likely to cause death or great bodily harm;

7 (2) "Dwelling," a building or structure of any kind, whether temporary or permanent,
 8 that is designed to be occupied by people lodging therein at night, together with
 9 any attached garage or porch, and which includes:

10 (a) A tent;

11 (b) A camper or motorhome; and

12 (c) Any other conveyance, whether mobile or immobile;

13 (3) "Forcible felony," arson, assault, burglary, kidnapping, manslaughter, murder,
 14 rape, and robbery, and any other felony that involves the use of or the threat of
 15 physical force or violence against a person;

16 (4) "Residence," a dwelling in which a person:

17 (a) Resides, either temporarily or permanently; or

18 (b) Is an invited guest; and

19 (5) "Unlawful force," an act of force that is employed without the consent of the person
 20 against whom it is directed and without legal justification or excuse;

21 (6) "Vehicle," a conveyance of any kind, whether motorized or not, which is designed
 22 to transport people or property.

23 **Section 2.** That § 22-18-4 be AMENDED.

1 **22-18-4. Force--Defense of person.**

2 ~~Any A~~ person is justified in the ~~using or threatening to use of force or violence,~~
 3 ~~force, other than deadly force,~~ against another ~~person when~~ if the person reasonably
 4 believes that ~~such conduct using or threatening to use force~~ is necessary to ~~prevent or~~
 5 ~~terminate defend against~~ the other person's trespass on or other criminal interference
 6 with real property or personal property lawfully in his or her possession or in the
 7 possession of another who is a member of his or her immediate family or household or of
 8 a person whose property he or she has a legal right to protect. However, the person is
 9 justified in the use of deadly force only as provided in §§ 22-16-34 and 22-16-35 ~~other's~~
 10 ~~imminent use of unlawful force.~~

11 A person who uses or threatens to use force in accordance with this section does
 12 not have a duty to retreat ~~if the person is in a place where he or she has a right to be~~
 13 ~~before using or threatening to use force.~~

14 **Section 3.** That a NEW SECTION be added:

15 **22-18-4.1. Deadly force--Defense of person.**

16 A person is justified in using or threatening to use deadly force if the person
 17 reasonably believes that using or threatening to use deadly force is necessary to prevent
 18 imminent death or great bodily harm to himself, herself, or another, or to prevent the
 19 imminent commission of a forcible felony.

20 A person who uses or threatens to use deadly force in accordance with this section
 21 does not have a duty to retreat and has the right to stand his or her ground, if the person
 22 using or threatening to use the deadly force is:

- 23 (1) Not engaged in a criminal activity; and
 24 (2) In a place where the person has a right to be.

25 **Section 4.** That a NEW SECTION be added:

26 **22-18-4.2. Defense of dwelling or residence--Force--Deadly force.**

27 A person who is in a dwelling or residence, in which the person has a right to be:

- 28 (1) Has no duty to retreat;
 29 (2) Has the right to stand his or her ground; and
 30 (3) Has the right to use or threaten to use:

31 (a) Force against another, if the person reasonably believes that using or
 32 threatening to use force is necessary to defend himself, herself, or another
 33 against the imminent use of unlawful force; and

- 1 (b) Deadly force, if the person reasonably believes that using or threatening to
2 use deadly force is necessary to prevent imminent death or great bodily
3 harm to himself, herself, or another, or to prevent the imminent commission
4 of a forcible felony.

5 **Section 5.** That a NEW SECTION be added:

6 **22-18-4.3. Imminent death--Great bodily injury--Reasonable fear.**

7 For purposes of § 22-18-4.2, a person is presumed to have held a reasonable fear
8 of imminent peril of death or great bodily harm, to himself, herself, or another, when using
9 or threatening to use defensive force that is intended or likely to cause death or great
10 bodily harm if:

11 (1) The person against whom the defensive force was used or threatened:

12 (a) Was in the process of unlawfully entering a dwelling, residence, or occupied
13 vehicle;

14 (b) Had unlawfully entered, a dwelling, residence, or occupied vehicle; or

15 (c) Had removed or was attempting to remove another against the other's will
16 from a dwelling, residence, or occupied vehicle; and

17 (2) The person who uses or threatens to use defensive force knew or had reason to
18 believe that an unlawful entry or an unlawful and forcible act was occurring or had
19 occurred.

20 **Section 6.** That a NEW SECTION be added:

21 **22-18-4.4. Presumption of fear--Exceptions.**

22 The presumption set forth in § 22-18-4.3 does not apply if:

23 (1) The person against whom the defensive force is used or threatened:

24 (a) Has the right to be in or is a lawful resident of the dwelling, residence, or
25 vehicle, including as an owner, lessee, or titleholder; and

26 (b) Is not the subject of a protection order, including a temporary protection
27 order;

28 (2) The person sought to be removed is the child, grandchild, or otherwise in the lawful
29 custody or under the lawful guardianship of the person against whom the defensive
30 force is used or threatened;

31 (3) The person who uses or threatens to use defensive force is engaged in a criminal
32 activity or is using the dwelling, residence, or occupied vehicle to further a criminal
33 activity; or

1 (4) The person against whom the defensive force is used or threatened is a law
2 enforcement officer, who enters or attempts to enter a dwelling, residence, or
3 vehicle in the performance of official duties and:

4 (a) The officer identified himself or herself as a law enforcement officer; or

5 (b) The person using or threatening to use force knew or reasonably should
6 have known that the person entering or attempting to enter was a law
7 enforcement officer.

8 **Section 7.** That a NEW SECTION be added:

9 **22-18-4.5. Unlawful entry--Presumption.**

10 A person who unlawfully and by force enters or attempts to enter a person's
11 dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to
12 commit an unlawful act involving force or violence.

13 **Section 8.** That a NEW SECTION be added:

14 **22-18-4.6. Force--Defense of property other than a dwelling.**

15 A person is justified in using or threatening to use force, other than deadly force,
16 against another if and to the extent the person reasonably believes that using or
17 threatening to use force is necessary to prevent or terminate another's trespass on, or
18 criminal interference with:

19 (1) Real property other than a dwelling;

20 (2) Personal property that is lawfully:

21 (a) In the person's possession;

22 (b) In the possession of a member of the person's immediate family or
23 household; or

24 (c) In the possession of one whose property the person has a legal duty to
25 protect.

26 A person who uses or threatens to use force in accordance with this section does
27 not have a duty to retreat before using or threatening to use such force.

28 **Section 9.** That a NEW SECTION be added:

1 **22-18-4.7. Deadly force--Defense of property other than a dwelling.**

2 A person is justified in using or threatening to use deadly force only if the person
3 reasonably believes that the use of deadly force is necessary to prevent the imminent
4 commission of a forcible felony.

5 A person who uses or threatens to use deadly force in accordance with this section
6 does not have a duty to retreat and has the right to stand his or her ground, if the person
7 using or threatening to use the deadly force is not engaged in a criminal activity and is in
8 a place where the person has a right to be.

9 **Section 10.** That a NEW SECTION be added:

10 **22-18-4.8. Immunity.**

11 A person who uses or threatens to use force, as permitted in §§ 22-18-4 to 22-18-
12 6, inclusive, is justified in such conduct and is immune from criminal prosecution and from
13 civil liability for the use or threatened use of such force brought by the person against
14 whom force was used or threatened, or by any personal representative or heir of the
15 person against whom force was used or threatened, unless:

16 (1) (a) The person against whom force was used or threatened is a law enforcement
17 officer, who was acting in the performance of official duties; and

18 (b) The officer identified himself or herself; or

19 (2) The person using or threatening to use force knew or reasonably should have
20 known that the person was a law enforcement officer who was acting in the
21 performance of official duties.

22 The court shall award reasonable attorney's fees, court costs, compensation for
23 loss of income, and all expenses incurred by a defendant in the defense of any civil action
24 brought by a plaintiff, if the court finds that the defendant is immune from prosecution in
25 accordance with this section.

26 In a criminal prosecution, once a prima facie claim of self-defense immunity has
27 been raised by the defendant, the burden of proof by clear and convincing evidence is on
28 the party seeking to overcome the immunity from criminal prosecution provided for in this
29 section.

30 As used in this section, the term, criminal prosecution, includes arresting, detaining
31 in custody, and charging or prosecuting the defendant.

32 **Section 11.** That a NEW SECTION be added:

1 **22-18-4.9. Aggressor--Use of force--Justification not available.**

2 Any justification for the use or the threatened used of either force or deadly force
3 is not available to a person who:

4 (1) Is attempting to commit, committing, or escaping after the commission of a forcible
5 felony; or

6 (2) Initially provokes the use or threatened use of force against himself or herself,
7 unless:

8 (a) Such force or threat of force is so great that the person reasonably believes
9 he or she is in imminent danger of death or great bodily harm and that
10 every reasonable means to escape such danger has been exhausted, other
11 than the use or threatened use of force that is likely to cause death or great
12 bodily harm to the assailant; or

13 (b) In good faith, the person withdraws from physical contact with the assailant
14 and indicates clearly to the assailant that he or she desires to withdraw and
15 terminate the use or threatened use of force, but the assailant continues or
16 resumes the use or threatened use of force.

17 **Section 12.** That § 20-9-8 be REPEALED.

18 **20-9-8. Right to use force in defense of persons or property.**

19 **Section 13.** That § 22-5-9 be REPEALED.

20 **22-5-9. Resistance to public offenses permitted.**

21 **Section 14.** That § 22-16-34 be REPEALED.

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

24 **Section 15.** That § 22-16-35 be REPEALED.

25 **22-16-35. Justifiable homicide--Defense of person--Defense of other**
26 **persons in household.**