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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 1263

02/18/2021 Authored by Mortensen and Bahr The bill was read for the first time and referred to the Committee on Public Safety and Criminal Justice Reform Finance and Policy

1.1 A bill for an act
1.2 relating to public safety; clarifying law on use of force in self-defense; eliminating
1.3 the common law duty to retreat in cases of self-defense outside the home; expanding
1.4 the boundaries of dwelling for purposes of self-defense; creating presumption of
1.5 right to self-defense; amending Minnesota Statutes 2020, sections 609.06,
1.6 subdivision 1; 609.065; proposing coding for new law in Minnesota Statutes,
1.7 chapter 609.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2020, section 609.06, subdivision 1, is amended to read:

1.10 Subdivision 1. When authorized. Except as otherwise provided in subdivisions 2 and
1.11 3 and section 609.065, reasonable force may be used upon or toward the person of another
1.12 without the other's consent when the following circumstances exist or the actor reasonably
1.13 believes them to exist:

1.14 (1) when used by a public officer or one assisting a public officer under the public
1.15 officer's direction:

1.16 (i) in effecting a lawful arrest; or

1.17 (ii) in the execution of legal process; or

1.18 (iii) in enforcing an order of the court; or

1.19 (iv) in executing any other duty imposed upon the public officer by law; or

1.20 (2) when used by a person not a public officer in arresting another in the cases and in
1.21 the manner provided by law and delivering the other to an officer competent to receive the
1.22 other into custody; or

2.1 (3) when used by any person in resisting or aiding another to resist an offense against  
2.2 the person; or

2.3 (4) when used by any person in lawful possession of real or personal property, or by  
2.4 another assisting the person in lawful possession, in resisting a trespass upon or other  
2.5 unlawful interference with such property; or

2.6 (5) when used by any person to prevent the escape, or to retake following the escape,  
2.7 of a person lawfully held on a charge or conviction of a crime; or

2.8 (6) when used by a parent, guardian, teacher, or other lawful custodian of a child or  
2.9 pupil, in the exercise of lawful authority, to restrain or correct such child or pupil; or

2.10 (7) when used by a school employee or school bus driver, in the exercise of lawful  
2.11 authority, to restrain a child or pupil, or to prevent bodily harm or death to another; or

2.12 (8) when used by a common carrier in expelling a passenger who refuses to obey a lawful  
2.13 requirement for the conduct of passengers and reasonable care is exercised with regard to  
2.14 the passenger's personal safety; or

2.15 (9) when used to restrain a person with a mental illness or a person with a developmental  
2.16 disability from self-injury or injury to another or when used by one with authority to do so  
2.17 to compel compliance with reasonable requirements for the person's control, conduct, or  
2.18 treatment; or

2.19 (10) when used by a public or private institution providing custody or treatment against  
2.20 one lawfully committed to it to compel compliance with reasonable requirements for the  
2.21 control, conduct, or treatment of the committed person.

2.22 **EFFECTIVE DATE.** This section is effective August 1, 2021, and applies to uses of  
2.23 force occurring on or after that date.

2.24 Sec. 2. **[609.064] DEFINITIONS.**

2.25 (a) For purposes of sections 609.065, 609.067, and 609.068, the terms in this section  
2.26 have the meanings given them.

2.27 (b) "Crime of violence" has the meaning given in section 624.712, subdivision 5.

2.28 (c) "Dwelling" means a building defined under section 609.556, subdivision 3, an  
2.29 overnight stopping accommodation of any kind, or a place of abode, that an individual  
2.30 temporarily or permanently is occupying or intending to occupy as a habitation or home.  
2.31 A dwelling includes but is not limited to a building or conveyance and that building's or  
2.32 conveyance's curtilage and any attached or adjacent deck, porch, appurtenance, or other

3.1 structure, whether the building or conveyance is used temporarily or permanently for these  
 3.2 purposes, is mobile or immobile, or is a motor vehicle, watercraft, motor home, tent, or the  
 3.3 equivalent.

3.4 (d) "Forcible felony" means any crime punishable by imprisonment exceeding one year,  
 3.5 the elements of which include the use or threatened use of physical force or a deadly weapon  
 3.6 against the person of another including but not limited to: murder in the first degree under  
 3.7 section 609.185; murder in the second degree under section 609.19; manslaughter in the  
 3.8 first degree under section 609.20; assault in the first degree under section 609.221; assault  
 3.9 in the second degree under section 609.222; assault in the third degree under section 609.223;  
 3.10 criminal sexual conduct in the first degree under section 609.342; criminal sexual conduct  
 3.11 in the second degree under section 609.343; arson in the first degree under section 609.561;  
 3.12 burglary in the first, second, and third degrees under section 609.582; robbery under sections  
 3.13 609.24 and 609.245; and kidnapping under section 609.25.

3.14 (e) "Good faith" includes honesty in fact in the conduct of the act concerned.

3.15 (f) "Imminent" means the actor infers from all the facts and circumstances that the course  
 3.16 of conduct has commenced.

3.17 (g) "Peace officer" has the meaning given in section 626.84, subdivision 1, paragraph  
 3.18 (c).

3.19 (h) "Reasonable force" means the use or threatened use of force that a reasonable person  
 3.20 would judge to be necessary to prevent an injury or loss and can include deadly force if a  
 3.21 person reasonably believes that using or threatening to use such force is necessary to avoid  
 3.22 injury or risk to the person's life or safety or the life or safety of another.

3.23 **EFFECTIVE DATE.** This section is effective August 1, 2021, and applies to uses of  
 3.24 force occurring on or after that date.

3.25 Sec. 3. Minnesota Statutes 2020, section 609.065, is amended to read:

3.26 **609.065 JUSTIFIABLE TAKING OF LIFE USE OF FORCE.**

3.27 Subdivision 1. **Self-defense; no duty to retreat.** ~~The intentional taking of the life of~~  
 3.28 ~~another is not authorized by section 609.06, except when necessary in resisting or preventing~~  
 3.29 ~~an offense which the actor reasonably believes exposes the actor or another to great bodily~~  
 3.30 ~~harm or death, or preventing the commission of a felony in the actor's place of abode. For~~  
 3.31 purposes of any section of law that creates a criminal offense, the following apply:

4.1 (1) a person who is not engaged in illegal activity has no duty to retreat from any place  
 4.2 where the person is lawfully present before using or threatening to use reasonable force,  
 4.3 including deadly force, in self-defense, defense of another, or defense of that person's  
 4.4 dwelling, as authorized under this section;

4.5 (2) except as provided in subdivision 3, a court or jury as trier of fact shall not consider  
 4.6 the possibility of retreat as a factor in determining whether a person who used or threatened  
 4.7 to use force, including deadly force, reasonably believed that such force was necessary to  
 4.8 prevent injury, loss, or risk to life or safety;

4.9 (3) a person is justified in the use of or threat to use reasonable force, including deadly  
 4.10 force, when the person reasonably believes that such force is necessary to defend the person  
 4.11 or another from any actual or imminent use of unlawful force;

4.12 (4) a person is justified in the use of or threat to use reasonable force, including deadly  
 4.13 force, even if an alternative course of action is available; and

4.14 (5) a person may be wrong in the estimation of the danger or the force necessary to repel  
 4.15 the danger if there is a reasonable basis for the person's belief and the person acts reasonably  
 4.16 in response to that belief.

4.17 Subd. 2. **Reasonable force justified in responding to a forcible felony.** A person who:

4.18 (1) reasonably believes that another person is committing or is about to commit a forcible  
 4.19 felony; and

4.20 (2) uses or threatens to use reasonable force, including deadly force, as authorized under  
 4.21 this section, is justified in using or threatening to use reasonable force, including deadly  
 4.22 force, against the other person to prevent or halt the commission of the forcible felony.

4.23 Subd. 3. **Loss of defense.** (a) The affirmative defense of self-defense, defense of another,  
 4.24 or defense of that person's dwelling is not available in a criminal action in any of the  
 4.25 following circumstances:

4.26 (1) a person who uses force during the person's attempted commission, commission, or  
 4.27 escape after the commission or attempted commission of a crime of violence;

4.28 (2) a person who uses force against another, who is an aggressor, if the person initially  
 4.29 provoked the aggressor to use force or threat of force against the person, unless either of  
 4.30 the following apply:

4.31 (i) the use of force or threat of force by the aggressor is sufficient for the person's  
 4.32 reasonable belief that the person is in imminent danger of death or great bodily harm, and

5.1 the person exhausts all reasonable means of escape other than the use of force or threat of  
5.2 force that is likely to cause death or great bodily harm to the aggressor; or

5.3 (ii) the use of force or threat of force by the aggressor continues or resumes after the  
5.4 person, in good faith, withdraws from physical contact and clearly indicates the desire to  
5.5 withdraw and terminate the use of force or threat of force by the person or the aggressor;

5.6 (3) a person who uses force to resist an unlawful arrest if the person uses the force against  
5.7 a peace officer and the person using the force knows the person making the arrest is a peace  
5.8 officer;

5.9 (4) a person who uses force to resist a lawful arrest if the person uses the force against  
5.10 a person making the arrest or against a person assisting in making the arrest;

5.11 (5) a person who uses force against a peace officer or a person assisting a peace officer  
5.12 if the peace officer is acting in the performance of the peace officer's official duties; or

5.13 (6) a person who:

5.14 (i) uses force;

5.15 (ii) is prohibited from possessing firearms under section 624.713; and

5.16 (iii) is in possession of a firearm when the force was used.

5.17 (b) When an affirmative defense is not available to a person under paragraph (a), the  
5.18 person is not barred from raising any other statutory or common law affirmative defense  
5.19 available to the person.

5.20 **EFFECTIVE DATE.** This section is effective August 1, 2021, and applies to uses of  
5.21 force occurring on or after that date.

5.22 **Sec. 4. [609.067] SELF-DEFENSE; CRIMINAL IMMUNITY.**

5.23 (a) A person who uses or threatens to use reasonable force, including deadly force, in  
5.24 accordance with section 609.06 or 609.065 shall be immune from arrest, the filing of criminal  
5.25 charges, or criminal prosecution arising from the person's use or threatened use of the  
5.26 reasonable force, including deadly force.

5.27 (b) A law enforcement officer may use standard investigating procedures for investigating  
5.28 the use or threatened use of force, including deadly force, but the law enforcement officer  
5.29 shall not arrest a person for the person's use or threatened use of force, including deadly  
5.30 force, unless the law enforcement officer has probable cause to believe that the person's use

6.1 or threatened use of force, including deadly force, was not justified under section 609.06  
6.2 or 609.065.

6.3 (c) The court shall award reasonable attorney fees, court costs, compensation for loss  
6.4 of income, and all expenses incurred by the defendant in defense of any civil action brought  
6.5 by a plaintiff if the court finds that the defendant is immune from criminal prosecution as  
6.6 provided in paragraph (a).

6.7 **EFFECTIVE DATE.** This section is effective August 1, 2021, and applies to uses of  
6.8 force occurring on or after that date.

6.9 Sec. 5. **[609.068] PRESUMPTION OF IMMUNITY; PRETRIAL CRIMINAL**  
6.10 **IMMUNITY; HEARING.**

6.11 Subdivision 1. **Presumption of immunity.** Subject to subdivision 3, a person is presumed  
6.12 to have acted in self-defense or defense of another when using or threatening to use deadly  
6.13 force that is intended or likely to cause death or great bodily harm to another if any of the  
6.14 following apply:

6.15 (1) the person against whom the deadly force is used or threatened is in the process of  
6.16 unlawfully and without privilege to do so entering, or has unlawfully and without privilege  
6.17 to do so entered, the dwelling, occupied vehicle, or place of business or employment of the  
6.18 person using or threatening to use the deadly force, or any other place in which the person  
6.19 using or threatening to use the deadly force is lawfully present;

6.20 (2) the person against whom the deadly force is used or threatened is by force or threat  
6.21 removing or attempting to unlawfully remove another person against the other person's will  
6.22 from any place that the person using or threatening to use the deadly force is lawfully present;  
6.23 or

6.24 (3) the person using or threatening to use the deadly force knows or has reason to believe  
6.25 that any of the conditions set forth in clause (1) or (2) are occurring or have occurred.

6.26 Subd. 2. **Presumption rebuttable.** The presumption set forth in subdivision 1 may be  
6.27 rebutted by a preponderance of the evidence, provided that the prosecution's burden of proof  
6.28 remains by clear and convincing evidence as described in subdivision 4, paragraph (d).

6.29 Subd. 3. **Loss of presumption.** The presumption set forth in subdivision 1 does not  
6.30 apply if, at the time the deadly force is used or threatened, any of the following circumstances  
6.31 are present:

7.1 (1) the person against whom the deadly force is used or threatened has a right to be in  
7.2 the place where the person used or threatened to use the deadly force and a protective or no  
7.3 contact order is not in effect against the person against whom the deadly force is used or  
7.4 threatened;

7.5 (2) the person sought to be removed as described in subdivision 1, clause (2), is a child  
7.6 or grandchild or is otherwise in the lawful custody or under the lawful guardianship of the  
7.7 person against whom the deadly force is used or threatened;

7.8 (3) the person who uses or threatens to use the deadly force uses or threatens to use it  
7.9 while engaged in a criminal offense, while attempting to escape from the scene of a criminal  
7.10 offense that the person has committed, or while using the dwelling, place of business or  
7.11 employment, or occupied vehicle to further a criminal offense; or

7.12 (4) the person against whom the deadly force is used or threatened is a law enforcement  
7.13 officer who has entered or is attempting to enter a dwelling, place of business or employment,  
7.14 or occupied vehicle in the lawful performance of the law enforcement officer's official  
7.15 duties, and either the officer identified himself or herself as a law enforcement officer in  
7.16 accordance with any applicable law or the person using or threatening to use the deadly  
7.17 force knows or reasonably should know that the person who has entered or is attempting to  
7.18 enter is a law enforcement officer.

7.19 Subd. 4. **Right to hearing; burden of proof; standard of proof.** (a) A person accused  
7.20 of an offense that involved the person's use or threatened use of force, including deadly  
7.21 force, against another has a right to a pretrial immunity hearing regarding a claim of immunity  
7.22 from criminal prosecution based on self-defense, defense of another, or defense of that  
7.23 person's dwelling.

7.24 (b) A person eligible for hearing under paragraph (a) may file a pretrial motion claiming  
7.25 that the person used or threatened to use the force, including deadly force, in self-defense,  
7.26 defense of another, or defense of that person's dwelling.

7.27 (c) The filing of the motion establishes a prima facie claim of self-defense, defense of  
7.28 another, or defense of that person's dwelling.

7.29 (d) Upon the filing of a motion, the court shall hold a pretrial immunity hearing and  
7.30 shall grant the motion and hold that the person used or threatened to use the force, including  
7.31 deadly force, in self-defense, defense of another, or defense of that person's dwelling unless  
7.32 the state proves by clear and convincing evidence that the person did not use or threaten to  
7.33 use the force, including deadly force, in self-defense, defense of another, or defense of that  
7.34 person's dwelling, as the case may be.

- 8.1 **EFFECTIVE DATE.** This section is effective August 1, 2021, and applies to uses of
- 8.2 force occurring on or after that date.