

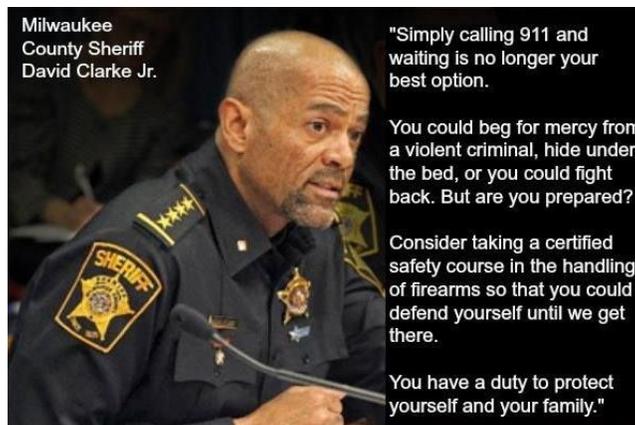
LB 612 White Paper

Strengthening Nebraska's Self-Defense Laws



LB 612 is strengthening and clarifying Nebraska's self-defense laws and puts the advantage for the law abiding citizen instead of the criminal. This allows the law abiding citizen to defend themselves anywhere they are they are lawfully allowed to be. Law abiding citizens have the right to defend themselves against death, serious bodily harm, robbery, arson, burglary, kidnapping, or sexual intercourse compelled by force or threat.

Violent crime occurs in a matter of seconds and no matter how closely patrolled, police response is still minutes away. A 2013 research article in the *Wall Street Journal* reported that the average police response time to an emergency call is 11 minutes, with some responses taking much longer. In Detroit the average response time is 58 minutes. Arizona Sheriff Richard Mack said, "police do very little to prevent violent crime. We investigate crime after the fact." In addition, the Supreme Court has ruled more than once that police officers have no legal duty to protect citizens from violent crime.



When a citizen is involved in a situation that may escalate into violence or threat of death, the thought process required to act in legal defense of oneself, family and others should be clear and easily followed. Legislative Bill 612 amends Section 28-1409 to strengthen and clarify Nebraska's self-defense laws.

Section 28-1409 delineates the conditions that must be present when force, or deadly force, may be used and considered justifiable under the law. Currently, this section of Nebraska's self-defense statute requires that in certain circumstances a person must retreat from using force outside their home or business. LB 612 would remove a person's "duty to retreat" from an attacker, allowing law-abiding citizens to protect themselves, or their family, anywhere they have a legal right to be.

LB 612 clarifies situations when law-abiding citizens may use deadly force to protect themselves against death, serious bodily harm, robbery, arson, burglary, kidnapping, or sexual intercourse compelled by force or threat, without a duty to retreat, providing Nebraska's law-abiding citizens protection under the law.

LB 612 allows law abiding citizens to protect themselves and their families without worrying about whether they have retreated sufficiently before using force. Criminals do not acknowledge firearm laws while law abiding citizens follow the law and need LB 612 to protect them. Law abiding citizens should not have to choose between being attacked and going to jail. Nebraskans deserve the same legal protections afforded to citizens that 23 other states already have, through fair and effective self-defense laws.

The police are in force to protect the great mass of citizens, investigate crimes, make arrests, create reports, etc. A police officer can't ride along with every citizen as protection. It is the law abiding citizens that must protect themselves and their families from criminal acts that endanger them against death, serious bodily harm, robbery, arson, burglary, kidnapping, or sexual intercourse compelled by force or threat.

Law abiding citizens have a duty to retreat when safe, but LB 612 does not require retreat if the law abiding citizen is in danger while making a decision in a split second. You generally can't escape a gun with perfect safety. If a jury later looks at a security camera recording with cameras located in the ceiling, the observer may see retreat options, but the law abiding citizen does not have that viewpoint and has to make a split second decision. The law abiding citizens are not the police and they should not pretend to be the police, if they can retreat. They should not be attempting to arrest the criminal unless there is a threat and they detain the criminal until police arrive or assisting a police officer when directed.

A usual self-defense requirement is to use only the force reasonably necessary to stop an aggressor means that a person defending themselves cannot use more force than the aggressor. For example, if an aggressor raises a fist or strikes a person with his hand, that person cannot shoot the aggressor. If a person uses deadly force to fend off an attack, he must have been in fear for his own life and that fear must have been reasonable. In other words, there must have been a reasonable basis for him to fear for his life, such as dealing with an aggressor who was pointing a gun, wielding another deadly weapon, or acting in a way that could cause death or serious bodily harm.

“Deadly force is justified only when undertaken to prevent imminent and otherwise unavoidable danger of death or grave bodily harm to the innocent.

Law enforcement authorities look for three elements to be present prior to charging or not charging the law abiding citizen / victim in a self-defense case where deadly force is used against the attacker. Further, when all three elements are present, a reasonable person (i.e. a juror) would consider a victim to be in immediate and unavoidable danger, but if one piece is missing, the victim may have a difficult time convincing the police or a jury that deadly force was justified. Let’s consider each element individually:

Ability

Ability means an attacker is capable of causing death or serious bodily harm. This can be through the use of a tool such as a gun, knife, or even a baseball bat, or it could be through a size disparity between a 250-lb man and 120-lb woman or elderly man in a wheelchair.

Opportunity

Opportunity means an attacker has the chance to cause death or serious bodily harm. Opportunity is frequently relative to the tool being used and the distance of the attacker from the victim. A barehanded thug would need to be much closer to a victim than an attacker armed with a crossbow. In addition to showing that the attacker or attackers had the ability to cause your death or inflict serious physical injury, you must also show that they had the opportunity to carry out a deadly force attack. This usually entails showing that they were close enough to use their ability against you.

In the 1970s Dennis Tueller, a Salt Lake City police sergeant, did a study comparing how long it took an officer to draw and fire a handgun with how long it took an average person to run at them from a distance of seven yards (21 feet) and inflict a fatal wound with let’s say a knife;. The times for both drawing and firing and running 21 feet averaged out to about 1.5 seconds.



Jeopardy

Jeopardy is a bit more abstract than the other two elements because it deals with intent. An attacker must make it evident that their intent is to cause death or serious bodily harm. It can be verbal, such as a threat of beating you to death. But actions can also reveal intent, such as swinging a golf club at your head or firing a handgun at you but unintentionally missing.

If you remove any one of those elements, then deadly force may not be justified.

Examples:

No Ability – *A 5 year-old girl swinging her fists, beating on your legs while wailing that she is going to kill you for not buying her a candy bar. She has the Opportunity and Jeopardy boxes checked, but not the Ability.*

No Opportunity – *A 250-lb weightlifter calls you over the phone and explains he's going to kill you and use your head as a soccer ball. While the gym goer certainly has satisfied the Ability and Jeopardy elements, you are not justified in driving over to his house and preemptively shooting him, because over the phone, he has no Opportunity.*

No Jeopardy – *While jogging on a trail in the park as the sun sets, you notice a handgun holstered on the hip of a female jogger approaching you from the opposite direction. With the firearm and her proximity, she certainly has the Ability and the Opportunity, but unless she makes any verbal or nonverbal threats, Jeopardy is not present.*

Law abiding citizens that have a Nebraska Concealed Handgun Permit (47,000+) can deter crime by first; they reduce the number of attempted crimes because criminals are uncertain which potential victims can defend themselves. Second, victims who have guns are in a much better position to defend themselves.

Law abiding citizens that have a Nebraska Concealed Handgun Permit have received safety training through classroom instruction approved by the Nebraska State Patrol and actual firing range safety qualification. Many Law abiding citizens that have a Nebraska Concealed Handgun Permit have continuing education classes in the legal aspect of self-defense and other related classroom instruction.

Since 2007, the number of concealed handgun permits has soared from 4.6 million to over 12.8 million, and murder rates have fallen from 5.6 killings per 100,000 people to just 4.2, about a 25 percent drop, according to the report from the Crime Prevention Research Center.

Although white males are still the largest concealed carry permit-holding group, the number of permits obtained by African Americans accelerated the most, with Asians and American Indians following in second.

Between 2012 and 2014 the number of African American permit holders increased from 10,389 to 17,594, according to the National Shooting Sports Foundation. African Americans females were the fastest-growing concealed handgun permit group, increasing 3.44 times faster than white females. "The stereotype of the gun owner being a middle-aged male white guy from the South is simply not correct anymore.

Gun rights advocates say that the uptick can be attributed to more minority populations and women in urban areas seeking to protect themselves from violent criminals. Gun rights advocates say that the findings fall in line with their personal experiences and research and directly refute the liberal argument that more guns lead to more violence according to National Shooting Sports Foundation.

Violent criminals could be black, white, brown, green, or blue. Race may not be a factor, because a violent criminal is a violent criminal. A Violent criminal is the worse experience a law abiding citizen could encounter.

It puts the lie to the myth promulgated by anti-gun individuals with misinformation that somehow more law-abiding citizens carrying guns will lead to more crime. In fact, quite the opposite is the case according to the National Shooting Sports Foundation. "More law-abiding citizens own firearms for self-protection, and crime continues to decline." There are approximately 716,416 Nebraska gun owners according to a gun owners website (2012, note 1).

LB 612 reduces state legal costs by authorities investigating a self-defense action by a trained law abiding citizen the authorities or the court system would rule the action as a justified shooting because of self-defense.

A case in point, April 29, 2010, Mr. McCullough of Omaha, NE, defended himself while at a Walgreens store at 61st Street and Northwest Radial Highway in Omaha, NE at 8:50 p.m. Police said two masked individuals walked into the store. One of them was armed with a short shotgun. The gunman pointed the weapon at customers and at the clerk behind the counter. A man who had a permit to carry a gun saw the robber point the weapon at the clerk and pulled out his handgun and shot the suspect multiple times, police said. The robber, identified by police as an 18-year-old, stumbled out of the store and collapsed.

"There is no question when the individuals entered the store with ski masks and gloves and a short shotgun that he was justified using deadly force to defend himself or other people in the store," says Douglas County Attorney Don Kleine.

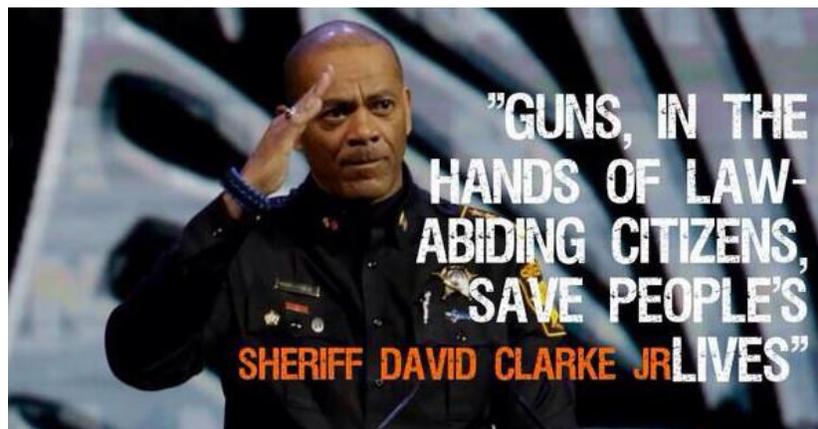
"He didn't let them get more than past the metal detectors," Douglas County Attorney Don Kleine said. He decided he wouldn't file any charges, even adding that McCullough did the right thing. Douglas County Attorney Don Kleine said "Tuesday afternoon that McCullough use of deadly force was "appropriate and justified" and he would not be charged in the slaying". Douglas County Attorney Don Kleine said "There's no question that he had the right to defend himself and protect the lives of the others in the store".

"People shouldn't enter stores with short shotguns and try and rob people. And it's as simple as that. Fortunately, it turned out that the perpetrator was taken out, and the other perpetrator was arrested," Douglas County Attorney Don Kleine said. Investigators said McCullough was questioned and released after conferring with the Douglas County Attorney Don Kleine. The Douglas County Attorney Don Kleine said McCullough acted quickly, and the shooting was justified. Douglas County Attorney Don Kleine said "civilians normally shouldn't put their lives at risk to prevent a crime. However, if someone feels threatened, he said, they have the right to defend themselves". Douglas County Attorney Don Kleine said "a bullet from the pistol was found inside the barrel of the shotgun, indicating that the 18 year old was aiming his gun at McCullough".

McCullough was in the store picking up prescriptions and buying ice cream when he decided to open fire on the suspected robber, his attorney said. "My client acted quickly, responsibly, and certainly accurately," said attorney James Martin Davis.

The second robbery suspect was detained until police arrived. (Source: Omaha World Herald writer Leia Mendoza, KETV Omaha)

This shows that "guns save lives". The robbers could have shot all of the people in the store.



Use lethal force by a law abiding citizen

A law abiding citizen can exercise self-defense if they believe that such force is necessary to protect themselves against death, serious bodily harm, robbery, arson, burglary, kidnapping, or sexual intercourse compelled by force or threat.

Furthermore, a law abiding citizen may use force against a criminal that is unlawfully entering or has entered, by force or stealth and remains within any dwelling, place of business or employment, or occupied vehicle of the law abiding citizen using force.

The law abiding citizen shall not be obliged to retreat from any place where the law abiding citizen is lawfully present or by surrendering possession of a thing to a person asserting a claim of right or by complying with a demand that they abstain from any action which they have no duty to take before using force, including deadly force, in their dwelling or place of work, unless they are engaged in illegal activity, was the initial aggressor, or is assailed in his place of work by another person whose place of work the actor knows it to be. A finder of fact (police, county attorney, jury, etc.) shall not be permitted to consider the possibility of retreat as a factor in determining whether or not the law abiding citizen who used force reasonably believed that the force was necessary to prevent injury, loss, or risk to life or safety.

A public officer is justified in using force in the performance of their duties or a law abiding citizen is justified in using force in their assistance or a person is justified in using force in making an arrest or preventing an escape shall not be obliged to desist from efforts to perform that duty, effect an arrest or prevent an escape because of resistance or threatened resistance by or on behalf of the person against whom such action is directed.

A law abiding citizen that is employing protective force may estimate the necessity under the circumstances that they believe them to be when the force is used, without retreating, surrendering possession, doing any other act which he has no legal duty to do, or abstaining from any lawful action.

The law abiding citizen may be wrong in the estimation of the danger or the force necessary to repel the danger as long as there is a reasonable basis for the belief that the law abiding citizen acts reasonably in the response to that belief.

The use of confinement as protective force only if the law abiding citizen takes all reasonable measures to terminate the confinement as soon as he knows that he safely can do so, unless the person confined has been arrested on a charge of crime.

NOT using lethal force

To resist an arrest which the law abiding citizen knows is being made by a peace officer, although the arrest is unlawful.

A law abiding citizen resisted force used by the occupier or possessor of property or by another person on their behalf, where the law abiding citizen knows that the person using the force is doing so under a claim of right to protect the property.

The law abiding citizen using force is engaged in a criminal offense, is attempting to escape from the scene of a criminal offense that the law abiding citizen has committed, or is using the dwelling, place of business or employment, or occupied vehicle to further a criminal offense.

The law abiding citizen is seeking to remove a child or grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom force is used.

The person against whom such force is used is a peace officer who has entered or is attempting to enter a dwelling, place of business or employment, or occupied vehicle in the lawful performance of the peace officer's official duties, and the law abiding citizen knows or reasonably should know that the person who has entered or is attempting to enter is a peace officer.

The person against whom such force is used has the right to be in, or is a lawful resident of, the dwelling, place of business or employment, or occupied vehicle of the law abiding citizen using force, and a protective or no-contact order is not in effect against the person against such force is used.

The law abiding citizen, with the purpose of causing death or serious bodily harm, provoked the use of force against themselves in the same encounter.

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The Nebraska Firearms Owners Association (NebraskaFirearms.org) is the largest firearms rights organization in the state of Nebraska with thousands of members. NFOA was organized to represent its membership at the Nebraska Legislature and other law making bodies within the state as well as at the federal level. Membership is free for all Nebraskans concerned with their right to keep and bear arms. NFOA members will also make it a priority to educate residents on firearms related issues. Email: admin@NebraskaFirearms.org for more information.

Note1: <http://usliberals.about.com/od/Election2012Factors/a/Gun-Owners-As-Percentage-Of-Each-States-Population.htm>