

# HOUSE RESEARCH

## Bill Summary

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### Overview

This bill is comprised of four Articles, as follows:

Article 1 extends from one-year to five-years the time period for a *Minnesota Permit-to-Purchase a Pistol*. It also mandates improved reporting of mental health and criminal background data to both the *Minnesota Crime Information System (MnCIS)* and the *National Instant Criminal History Background Check System (NICS)* for purposes of making background checks on applicants for a Minnesota permit-to-purchase a pistol, as well as a Minnesota permit-to-carry a pistol.

Article 2 both defines and delimits the authority of peace officers to disarm individuals during times of public emergency or public disorder, and provides a speedy means for judicial relief from any violation of that prohibition.

Article 3 codifies and significantly amends Minnesota's law governing the use of force, including lethal force, in self defense, both within and away from the home.

Article 4 provides for the recognition by Minnesota of permits-to-carry a pistol issued by other states and jurisdictions, provided that the permit holder conforms to Minnesota's pistol carry laws while carrying a pistol within Minnesota.

#### **Article 1: Permit to Purchase a Pistol: Background Checks and Renewal Period**

##### **Overview**

This Article directs the Minnesota Department of Human Services and Minnesota Courts to provide certain additional individual level data to the appropriate Minnesota and Federal agencies that support Minnesota law enforcement officials doing background checks on persons applying for a Minnesota permit-to-purchase a pistol or a Minnesota permit-to-carry a pistol. It also changes from one-year to five-years the effective period for the permit-to-purchase. Finally, it mandates an annual progress report to the Legislature by the Department of Human Services.

- 1 Human services provision of mental health commitment information.** Current law since 1994 has directed the commissioner of human services (MnDHS) to electronically provide mental health commitment information on individuals to the Minnesota Crime Information System (MnCIS)

maintained by the Bureau of Criminal Apprehension (MnBCA) for use by local law enforcement agencies in performing background checks on applicants for a *permit-to-purchase* a pistol or semi-automatic military style assault weapon (i.e., a *SAMSAW*) or a *permit-to-carry* a pistol in Minnesota.

This provision of the bill broadens that requirement by directing that the commissioner of DHS must also provide such information to the *Nation Instant Criminal Background Check System (NICS)* being maintained by the FBI for the purpose of background checks on all firearms purchasers nationally. Under the bill, the commissioner must, by August 1, 2011, transfer to both of these agencies all mental health commitment information in its possession dating to August 1, 1994, the original effective date of the statute.

- 2 and 4 Permit-to-purchase a pistol: expiration date extended; annual background check.** Under current law, a person wishing to purchase a pistol of semi-automatic, military-style assault weapon (*SAMSAW*) from a federally-licensed firearms dealer (an *FFL*) must first apply to the person's local chief of police for a *permit-to-purchase*.

There is no fee for such application, and the permit is valid statewide for one-year. (The permit-to-purchase applies only to the purchase of a pistol or *SAMSAW*; it is *not required* for the purchase of a rifle or shotgun, or a muzzleloader of any type.)

[Note that no permit-to-purchase or background check is required for a private citizen who is *not an FFL* to sell a firearm to (or purchase one from) another private citizen who also is not an *FFL*. This federal law is intended to regulate firearms dealers.]

There is a required seven-day waiting period between time of application for and the issuance of a *permit-to-purchase*, during which time the police chief, or chief's designee, must conduct a criminal and mental health commitment background check on the applicant. A person who possesses a valid permit-to-purchase may purchase one or more pistols and/or *SAMSAWs* from an *FFL* at any time, provided that at the time of sale the permit holder also submits to and passes an instant *NICS* check through a phonecall by the *FFL* to the FBI. A permit-to-purchase becomes invalid immediately upon a person becoming a firearms-prohibited person at any time under federal or state law.

Section 4 of the bill would extend the effective period of a permit-to-purchase from one-year to five-years for all currently valid permits, while section 3 of the bill would require the chief of police to perform a background check on permit holders at least annually, via a phonecall to the FBI's National Instant Check System (*NICS*).

A permit holder, like any other person, is responsible for knowing if he or she becomes prohibited by law from possessing firearms, and commits a felony by possessing or attempting to purchase a firearm. (And thus, any newly attempted purchase from an *FFL* would presumably be blocked through the dealer's phone call to the FBI's *NICS* system.)

- 5 Petition for relief in denial of application for a permit-to-purchase a pistol.** Current law provides that the only grounds for denial by the chief of police of an application for a permit-to-purchase a pistol or *SAMSAW* shall be that the applicant is determined by the chief to be a firearms-prohibited person under the law. Minnesota Statutes, section 624.7131, subdivision 8, of current law provides that a person aggrieved by a denial of an application for a permit-to-purchase may appeal the denial to the district court in the county in which the denial occurred.

Section 5 of the bill adds language directing that, in the event of an appeal, the court must order that the permit be issued if the applicant is not a person prohibited by law from possessing a pistol or *SAMSAW*. The bill further directs that, if the court grants relief under this subdivision, the court must award the petitioner reasonable costs and expenses, including attorney fees.

- 6 Reporting requirement.** This section directs the commissioner of human services to report annually

to the legislature on its progress in meeting the data provision requirements of section 1.

## **Article 2: Authority to Seize Weapons**

### **Overview**

This article defines and delimits the authority of peace officers to disarm individuals during times of public emergency or public disorder, and provides a means for relief from any violation of that prohibition.

- 7 Paragraph (a). Authority to disarm delimited.** Stipulates that a peace officer may disarm and detain an individual only temporarily and only if the officer reasonably believe it is necessary to prevent harm to himself or another, and upon releasing the person must return any firearm and firearms component, unless the officer arrests the person for suspicion of a crime or keeps the firearm to investigate a crime.
- Paragraph (b).** Withstanding any other law to the contrary, prohibits a peace officer from a range of specified actions having the effect of arbitrarily curtailing a person's ability to lawfully possess, carry and use firearms at any time.
- Paragraph (c).** Prohibits construing any disorder or disaster emergency proclamation by the Governor or any other state or local public official as authorizing any violation of paragraphs (a) or (b).
- Paragraph (d).** Provides that a person aggrieved by a violation of this section may seek relief in district court in an action at law or in equity for damages, injunctive relief, and any other appropriate redress, including the immediate return of the person's seized firearms, against a person who commits or causes the violation. If the court upholds the appeal, it must order the immediate return of the seized or confiscated items, and must award the prevailing plaintiff reasonable court costs and expenses, including attorney fees.

## **Article 3: Self-Defense: Use of Force**

### **Overview**

The current statute governing the use of lethal force in self defense in Minnesota is very brief, stating only that:

*The intentional taking of the life of another is not authorized . . . except when necessary in resisting or preventing an offense which the actor reasonably believes exposes the actor or another to great bodily harm or death, or preventing the commission of a felony in the actor's place of abode.*

Given this brevity of statutory codification, it is not surprising that much of Minnesota's self defense law is found in case law (i.e., court rulings), including even certain precepts of English common law.

This Article clarifies, through codification in statute, and significantly changes several provisions of current Minnesota law governing the use of force in self defense, both within the home and in public places, as follows:

- It affirms current law in permitting the use of lethal force to prevent the commission or attempted commission of a felony within the home (i.e., *Castle Doctrine*).
- It clarifies and affirms the current law principle that an individual does not have a duty to retreat. before using force in self defense within the home

- It repeals the common law duty to retreat in the face of grave danger occurring in a public place away from the home.
- It broadens the definition of "*dwelling*" to include an individual's home and its curtilage, as well as any building, overnight stopping accommodation of any kind, or place of abode that an individual is temporarily or permanently occupying or intending to occupy as a habitation or home.

A *dwelling* may include, but is not limited to, a building or conveyance and its curtilage, appurtenances and attached or adjacent structures, whether used temporarily or permanently as a habitation or home, whether mobile or immobile, and whether it is a motor vehicle, a watercraft, a motor home, a tent, or the equivalent.

- It creates a *rebuttable presumption* that an individual using deadly force is presumed to possess a *reasonable belief* that there exists an imminent threat of substantial or great bodily harm or death when the person against whom force is being used is entering or has entered into by force or stealth and remains within the individual's home or occupied motor vehicle, or who by force or stealth is removing the individual or another individual from the home or occupied motor vehicle.

This presumption is not available to a person using force against a person lawfully entering the home, or lawfully possessing the vehicle, or who has lawful custody of the person being removed.

- It allows a defender to use all force and means and meet force with superior force, as well as to continue using force, against an assailant until the danger is eliminated. It reverses the burden of proof in cases of self defense, from the defender having to prove his or her innocence, to the prosecution having to prove beyond a reasonable doubt that the person did *not* act lawfully in self defense.

## 8 Use of deadly force in defense of home and person.

**Subd. 1. Definitions.** Strikes the current language of this statute in its entirety. Also provides definitions of: *court order*; *deadly force*; *dwelling*; *forcible felony*; *substantial bodily harm*; and *vehicle*.

[Each of these definitions is detailed and important in its own right. However, in the interests of precision, the reader is encouraged to read them directly from the bill itself.]

**Subd. 2. Circumstances when authorized.** Authorizes the use of deadly force when undertaken:

- 1) To resist or prevent a the commission of a felony in the person's dwelling (same as current law);
- 2) To resist or prevent what the individual reasonably believes is an offense that imminently exposes the individual or another person to substantial or great bodily harm or death; or
- 3) To resist or prevent what the individual reasonably believes is the commission or imminent commission of a forcible felony.

States that the use of deadly force is *not authorized* if the individual knows that the person against whom force is being used is a licensed peace officer who is acting lawfully.

**Subd. 3. Degree of force; retreat.** An individual taking defensive action may use all force and means, including deadly force, that the individual *honestly and in good faith believes* is required to succeed in defense. The individual may meet force with superior force, and may continue to use force against the assailant until the danger is eliminated.

The bill further repeals *the common law duty of a person to retreat before using force in self defense in public places*. [Some 20 or so other states have no duty to retreat from an assailant in public places. In addition, few if any states, Minnesota included, have had any *duty to retreat* within the home, abode or dwelling.]

**Subd. 4. Presumptions created.** This subdivision creates a rebuttable presumption for a person using deadly force in self defense.

**Paragraph (a)** states that an individual using deadly force is presumed to possess a reasonable belief that there exists an imminent threat of substantial or great bodily harm or death to the individual or another, if the person knows or has reason to know that the person against whom defensive action is being taken:

- (1) is entering or attempting to enter by force or stealth, or has entered by force or stealth and remains within, the dwelling or occupied vehicle of the individual; or
- (2) is in the process of removing, or attempting to remove, the individual or another person from the dwelling or occupied vehicle of the individual.

[Note that any presumption, including this one, is *rebuttable* at trial, based on the reasonableness of the circumstances of the alleged act, in the eyes of the jury.]

**Paragraph (b)** states that the individual is not entitled to the benefit of the presumption in paragraph (a) if the individual knows that the person against whom the defensive action is being taken:

- (1) is a lawful resident of the dwelling or a lawful possessor of the vehicle, or is otherwise lawfully permitted to enter the dwelling or vehicle; or
- (2) is a person who has lawful custody of the person being removed from the dwelling or vehicle.

The bill explicitly states that: *A person who is prohibited by court order from contacting another individual or from entering a dwelling or possessing a vehicle of another individual is not a lawful resident of that individual's dwelling and is not a lawful possessor of that individual's vehicle.*

**Subd. 5. Criminal investigation; immunity from prosecution.**

**Paragraph (a)** provides that a person who uses force, including deadly force, according to this section in defense of the individual, the individual's dwelling, or another individual is justified in using such force and is immune from any civil liability or criminal prosecution for that act.

**Paragraph (b)** provides that a law enforcement agency may arrest an individual using force under circumstances described in this section only after considering any claims or circumstances supporting self-defense or lawful defense of another individual.

**Subd. 6. Justifiable use of force; burden of proof.** Provides that in a criminal trial, where there is any evidence of justifiable use of force under this section, *the state has the burden of proving beyond a reasonable doubt* that the defendant's actions *were not* justifiable. In short, the bill reverses the presumption of: (1) the defendant being presumed guilty until proven innocent, to (2) the defendant being presumed innocent unless and until being proven guilty.

**Subd. 7. Short title.** Provides that this section of law may be cited as the "*Defense of Dwelling and Person Act of 2011.*"

#### **Article 4: Recognition of Other State's Permits to Carry a Pistol**

##### **Overview**

This article provides for the recognition by Minnesota of a permit-to-carry a pistol issued by any other state or non-Minnesota governmental jurisdiction, so long as the permit remains valid in the issuing jurisdiction and has not since been invalidated by any Minnesota district court.

- 1 Recognition extended.** Current law directs the commissioner of public safety to annually determine which states have laws governing the requirements for issuing a *permit-to-carry a pistol* that are substantially similar to Minnesota's own requirements. A permit-to-carry from each such state is valid for carrying a pistol in Minnesota, subject to Minnesota's carry law (Minn. Stat. § 624.714).

The MnBCA Web site currently lists 14 other states as having substantively similar laws to Minnesota's carry law, as follows: Alaska, Arkansas, Kansas, Kentucky, Louisiana, Michigan, Missouri, New Mexico, Nevada, Ohio, Oklahoma, Tennessee, Texas, Utah and Wyoming. In essence, Minnesota currently recognizes those States' permits-to-carry a pistol as being valid within Minnesota, provided that the permit holder complies with Minnesota law governing carrying.

Current law stipulates that a permit from any recognized state becomes invalid for use in Minnesota if the holder's permit becomes invalid in the state of issuance.

Current law also provides means for a Minnesota Sheriff to petition the District Court to invalidate any (Minnesota or) non-Minnesota permit for use within Minnesota on the grounds that there is a substantial likelihood that the permit holder is a danger to self or others if permitted to carry a pistol in Minnesota. Current law provides that if the Court denies the Sheriff's petition, it must award the permit holder reasonable court costs and expenses, including attorney fees.

The bill extends current law by recognizing permits-to-carry a pistol issued by any other state or other non-Minnesota governmental jurisdiction.

The bill also directs the commissioner of public safety to publish a list of states that recognize Minnesota permits-to-carry a pistol for use in their states.

Most other language changes in the bill are clarifying or conforming.