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10/3/03
Date

2003 HOUSE JUDICIARY
HB 1337

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1337

House Judiciary Committee

Conference Committee

Hearing Date 2-11-03

Tape Number	Side A	Side B	Meter #
2		xx	0-27
3	xx		49.3-52.7
Committee Clerk Signature <i>A. Penrose</i>			

Minutes: 13 members present.

Chairman DeKrey: We will open the hearing on HB 1337.

Rep. Iverson: Introduced the bill. Support. I will amend line 8, after the word upon, take out the word conviction and change to plea of guilty, finding of guilty, or a verdict of guilty. I will draw up the necessary amendments for the committee.

Chairman DeKrey: Thank you.

Rep. Eckre: This also talks about the other civil rights, why don't you list the other civil rights.

Rep. Iverson: I don't know. We wanted to aim this specifically at the gun rights. We could include the other rights, if you wish.

Rep. Eckre: If you are only talking about the gun rights, why does it say "loses all civil rights, including the right to bear arms".

Rep. Iverson: I believe Mr. McCabe can answer that.

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Rep. Delmore: Knowing that domestic violence is the #1 cause of death, a misdemeanor, how serious would it have to be with weapons before he would be charged.

Rep. Iverson: If someone is determined, they will go ahead and commit felonies by killing their spouse. There is nothing we can do to stop that. Now if somebody commits a misdemeanor, they go through counseling, etc. I don't think someone who is a policeman or a National Guard, someone who has to use a firearm in the execution of their job, they should not lose their gun rights, lose their ability to do their jobs because of it.

Rep. Delmore: If someone is charged with a misdemeanor w/weapon, that had used it as a threat, and if the gun is given back to that person, aren't we then saying you can carry this to the next step, if we give the gun back.

Rep. Iverson: If that person is determined to do this, there is no law we can pass that's going to stop them. This is aimed at the individual who has had an argument with his wife, it goes too far, but they lose all their gun rights.

Rep. Delmore: A misdemeanor would never lead to a felony.

Rep. Iverson: I am not going to say. I don't know.

Chairman DeKrey: Thank you for appearing. Further testimony in support of HB 1337.

Chad McCabe, attorney: (see attached testimony) Support. If you are found guilty, you lose your core civil rights. That isn't right that you can't get them back.

Rep. Eckre: What are the other civil rights.

Mr. McCabe: We didn't want to list them. The only way to rectify the situation, is to take away the civil rights at the state level upon a plea of guilty, finding of guilty, or a verdict of guilty.

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Then you lose the core civil rights. Then restore them upon sentencing, and then you will keep your federal rights to bear arms.

Rep. Eckre: I wanted them just so that I would know.

Mr. McCabe: Basically, this bill is telling the federal courts to stay out of ND. You are trying to monkey with our system, and we're trying to tell them "look we fixed it, stay out of our business". If we say which civil rights, they could play games with us, and say well you didn't say this civil right, you didn't say this civil right, so I would really prefer this to say loss of civil rights, that person upon sentencing, which is generally within seconds of having been found guilty, that person will then be restored their civil rights. For 99% of the people this is not going to be anything at all. It's just going to be something that can protect us, to keep our federal gun rights in ND. There are situations, usually felonies though, where people have a conviction and then sentencing is at a later date.

Rep. Eckre: I wanted to know the law. Your political, personal, civil, etc. rights.

Mr. McCabe: If it is a misdemeanor assault that includes violence, you actually do lose your gun rights under ND. I am talking about simple assault, class B misdemeanor, a little assault. Those are the ones where you don't lose your gun rights, you do lose your gun rights if it a class A misdemeanor assault, not defined as a simple assault. Aggravated assaults which are felonies.

Rep. Delmore: I have a problem with the term simple assault. This says "all misdemeanors", how far can you go and still be a misdemeanor?

Mr. McCabe: The prosecutor makes the decision as to what to charge the person. But I don't want to lose federal gun rights because of this simple assault.

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Rep. Delmore: How far can I carry an assault, and still be charged with a misdemeanor instead of a felony.

Mr. McCabe: If it is bodily injury, serious bodily injury under chapter 12.1, various degrees of injury - the prosecutor decides what to charge the person.

Rep. Klemm: If convicted of major felony - you are prohibited from owning a firearm or having one in your possession for 10 years after the date of your conviction or release from prison; or a class A misdemeanor involving violence while using firearm, you lose your gun rights for 5 years. Are you saying that if you are convicted of a class B misdemeanor involving domestic violence that you are prohibited from possessing a firearm forever.

Mr. McCabe: Under chapter 62, the only way you can lose your firearm rights is if it was either a felony or a misdemeanor including violence. If it is a class B misdemeanor, then you do not lose your gun rights under North Dakota law.

Rep. Klemm: You said a class B misdemeanor, you don't lose your gun rights. I thought that is what the premise was, for simple assault, a class B misdemeanor involving domestic violence, you do lose your guns rights.

Mr. McCabe: You don't lose your gun rights under state law, you lose your gun rights under 18 USC 921, which is a federal law. The federal law says if you plead guilty to a misdemeanor crime of domestic violence, you lose your federal gun rights, and the only way that we will give them back to you, is if the state takes away your core civil right, and then restores them, and because ND doesn't take them away, they cannot be restored according to these federal cases. So with this bill I am asking you to take them away for a very brief moment in time and then restore them and that way we've complied with the federal code.

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Rep. Wrangham: Is this weakening any state laws out there at this time. If I committed a violent misdemeanor in ND, I would lose my rights.

Mr. McCabe: Yes.

Rep. Wrangham: This bill would not affect whether I would lose them, or when I would get them back. If you lost your gun rights in ND, you would get them back under federal law.

Mr. McCabe: Yes. I am talking about offenses where you don't lose your gun rights under ND law, where you plead guilty, but don't lose gun rights.

Rep. Wrangham: Under present law, if I commit an assault, simple assault, just a misdemeanor I do not lose my gun rights in ND. Is that correct?

Mr. McCabe: You don't lose them under ND law, you lose them under federal law.

Rep. Delmore: Why you did not put a non-violent misdemeanor in the bill, if that was your intent. (then read the meaning of simple assault) There is no limit there as to how violent that has to be. I would assume that is left up to someone who charges, that would give them a great deal of latitude.

Mr. McCabe: If there is bodily injury greater than what you have just defined, then the person would not be charged with simple assault. You would be charged with a felony.

Chairman DeKrey: Thank you. Further testimony in support? Testimony in opposition.

Linda Isakson on behalf of Bonnie Palacek, ND Council on Abused Women's Services:

(see attached testimony). Opposed.

Chairman DeKrey: Thank you. Any further testimony in opposition? We will close the hearing. (Reopened later in the afternoon session)

Chairman DeKrey: What are the committee's wishes in regard to HB 1337.

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Rep. Delmore: I move a Do Not Pass.

Rep. Eckre: Seconded.

12 YES 1 NO 0 ABSENT

DO NOT PASS

CARRIER: Rep. Galvin

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Date: 2/11/03
 Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1337

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Delmore Seconded By Rep. Eckre

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre	✓	
Rep. Bernstein		✓	Rep. Onstad	✓	
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. Wrangham					

Total (Yes) 12 No 1

Absent 0

Floor Assignment Rep. Galvin

If the vote is on an amendment, briefly indicate intent:

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Doreen Halverson 10/3/03
 Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
February 12, 2003 1:21 p.m.

Module No: HR-27-2410
Carrier: Galvin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1337: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO NOT PASS**
(12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1337 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-27-2410

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