

2023 HOUSE ENERGY AND NATURAL RESOURCES

HB 1350

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1350
1/26/2023

Relating to criminal code definitions, weapons definitions, mandatory prison terms for armed offenders, persons who are not to possess firearms, and restoration of rights to possess a firearms and to provide a penalty

4:11 PM

Chairman Porter opened the hearing. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Marschall, Novak, Olson, Roers Jones, and Ruby. Absent: Representative Kasper

Discussion Topics:

- Possesses/possession definition
- Bruen decision
- Amendment 23.0570.01002
- Class 1 and 2
- Reciprocity
- Misdemeanor
- NICS (National Instance Criminal Search)

Rep Ben Koppelman, District 16, presented HB 1350 and a proposed amendment 23.0570.01002, Testimony 20915
Casey Miller, Chief Agent, BCI, called forward to clarify questions

Additional written testimony:

Seth O'Neill, Testimony 16439
Mark Friese, Testimony 16810
Jill McDonald, Testimony 16861
Tara Bjornson, Testimony 16884

4:51 PM Chairman Porter closed the hearing.

Kathleen Davis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1350

2/2/2023

Subcommittee

Relating to criminal code definitions, weapons definitions, mandatory prison terms for armed offenders, persons who are not to possess firearms, and restoration of rights to possess a firearm; and to provide a penalty.

8:00 AM Chairman Heinert called the subcommittee meeting to order. Present were Chairman Heinert, Representatives Ista, Roers Jones. Absent: subcommittee member Rep Ruby.

Also present: Rep. Porter

Discussion topics:

- Gun bills

Chairman Heinert stated the 7 gun bills the subcommittee would be working on:

1. HB 1339
2. HB 1340
3. HB 1341
4. HB 1350
5. HB 1404
6. HB 1479
7. HB 1483

Claire Ness from the Attorney General's office will attend with information on a Supreme Court case next Thursday, February 9, 2023 at 8 AM. The subcommittee will also meet next Friday, February 10, 2023 at 8:00 AM.

8:04 AM Chairman Heinert closed the meeting.

Kathleen Davis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1350

2/9/2023

Subcommittee

Relating to criminal code definitions, weapons definitions, mandatory prison terms for armed offenders, persons who are not to possess firearms, and restoration of rights to possess a firearm; and to provide a penalty.

8:00 AM

Chairman Heinert called the meeting to order. Present were Chairman Heinert, Representatives Ista, Roers Jones, and Ruby. Also present were Representatives D Anderson and Porter.

Discussion Topics:

- Reasoning by analogy
- Person's conduct
- 2nd amendment
- Dangerous and unusual weapons
- Proposed amendment 01001

Claire Ness, Chief Deputy Attorney General, ND Attorney General's Office, oral testimony on New York State Rifle & Pistol Association Inc. v. Bruen (Decided on June, 2022)

8:25 AM Chairman Heinert closed the meeting.

Kathleen Davis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1350
2/10/2023
Subcommittee

Relating to criminal code definitions, weapons definitions, mandatory prison terms for armed offenders, persons who are not to possess firearms, and restoration of rights to possess a firearm; and to provide a penalty.
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8:00 AM

Chairman Heinert called the meeting to order. Present were Chairman Heinert, Representatives Ruby, and Ista. Rep Roers Jones was absent.

Discussion Topics:

- Study

Chairman Heinert stated that the subcommittee recommend to the full committee a Do Not Pass on HB 1350.

8:45 AM Chairman Heinert closed the meeting.

Kathleen Davis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1350
2/16/2023
Subcommittee

Relating to criminal code definitions, weapons definitions, mandatory prison terms for armed offenders, persons who are not to possess firearms, and restoration of rights to possess a firearm; and to provide a penalty.
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8:10 AM

Chairman Heinert called the meeting to order. Present were Chairman Heinert, Representatives Roers Jones, Ruby, and Ista.

Discussion Topics:

- Subcommittee action

Casey Miller, Chief Agent, BCI was called forward to answer questions.
Rep Koppelman, District 16, oral testimony

Rep Roers Jones moved to recommend to the full committee to remove Section 5 and Do Pass as amended, seconded by Rep Ista.

Representatives	Vote
Representative Pat D. Heinert	Y
Representative Zachary Ista	Y
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	N

3-1-0 Motion carried.

8:26 AM Chairman Heinert closed the meeting.

Kathleen Davis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1350
2/16/2023

Relating to criminal code definitions, weapons definitions, mandatory prison terms for armed offenders, persons who are not to possess firearms, and restoration of rights to possess a firearms and to provide a penalty

9:51 AM

Chairman Porter opened the meeting. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Olson, Roers Jones, and Ruby.

Discussion Topics:

- Committee action

Rep Heinert moved to adopt an amendment, to remove Page 10 Section 5 through the end of the bill; adopt Sections 1-4, identify what possess means; Page 5 Line 24 what is NOT possession, and clean up the language, seconded by Representative Roers Jones.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	Y
Representative Jim Kasper	AB
Representative Andrew Marschall	N
Representative Anna S. Novak	Y
Representative Jeremy Olson	Y
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	N

11-2-1 Motion carried.

Rep Heinert moved a Do Pass as Amended, seconded by Rep Ista.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y


Representative Zachary Ista	Y
Representative Jim Kasper	AB
Representative Andrew Marschall	Y
Representative Anna S. Novak	Y
Representative Jeremy Olson	Y
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	Y

13-0-1 Motion carried. Rep. Roers Jones is carrier.

9:57 AM Chairman Porter closed the meeting.

Kathleen Davis, Committee Clerk

AG
2/16-23
(1-1)



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1350

- Page 1, line 1, after the third comma, insert "and"
- Page 1, line 2, remove ", and section 62.1-02-01.1"
- Page 1, line 4, after the first comma insert "and"
- Page 1, line 4, remove ", and restoration of rights to possess"
- Page 1, line 5, remove "a firearm"
- Page 10, remove lines 16 through 31
- Page 11, remove lines 1 through 21
- Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1350: Energy and Natural Resources Committee (Rep. Porter, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1350 was placed
on the Sixth order on the calendar.

Page 1, line 1, after the third comma, insert "and"

Page 1, line 2, remove ", and section 62.1-02-01.1"

Page 1, line 4, after the first comma insert "and"

Page 1, line 4, remove ", and restoration of rights to possess"

Page 1, line 5, remove "a firearm"

Page 10, remove lines 16 through 31

Page 11, remove lines 1 through 21

Renumber accordingly

2023 SENATE JUDICIARY

HB 1350

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1350
3/15/2023

A bill relating to criminal code definitions, weapons definitions, mandatory prison terms for armed offenders, and persons who are not to possess firearms; and to provide a penalty.

3:22 PM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler and Braunberger are present. Senator Paulson is absent.

Discussion Topics:

- Prison sentences
- Drug Offenses
- Convicted felons
- Defining “possession”

3:22 PM Representative Ben Koppelman introduced the bill and provided written testimony #25378.

3:41 PM Jennifer Clark, Code Revisor, Legislative Council spoke neutral on the bill.

3:44 PM Chairman Larson closed the public hearing.

3:45 PM Senator Myrdal moves to adopt amendment “remove section 2 of the bill”. Motion seconded by Senator Luick.

3:45 PM Roll call vote is taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	AB
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 6-0-1.

3:51 PM Senator Myrdal moved to reconsider action the committee took on the adopted amendment, “remove section 2 of the bill”. Motion seconded by Senator Luick.

3:51 PM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	AB
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 6-0-1.

3:51 PM Senator Myrdal moves to adopt amendment, “in section 2 of the bill remove overstruck and underlined language on line 7, 8 and 9 except the wording “within immediate reach and control” and remove lines 20 and 25. Senator Luick seconds the motion.

3:57 PM Senator Myrdal moves to withdraw her motion to amend. Senator Luick withdraws his second.

3:57 PM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1350
3/21/2023

A bill relating to criminal code definitions, weapons definitions, mandatory prison terms for armed offenders, and persons who are not to possess firearms; and to provide a penalty

10:24 AM Chairman Larson opened the hearing.

Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson and Braunberger are present.

Discussion Topics:

- Firearm possession
- Definitions of Possession
- Supreme Court

10:24 AM The committee has discussion on the bill.

10:29 AM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1350
3/27/2023

A bill relating to criminal code definitions, weapons definitions, mandatory prison terms for armed offenders, and persons who are not to possess firearms; and to provide a penalty

9:47 AM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson and Braunberger are present.

Discussion Topics:

- SB 2107 status
- Bill conflicts

9:47 AM The committee has discussion on the bill.

9:49 AM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1350
4/3/2023

A bill relating to criminal code definitions, weapons definitions, mandatory prison terms for armed offenders, and persons who are not to possess firearms; and to provide a penalty
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4:11 PM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson and Braunberger are present.

Discussion Topics:

- Committee action

4:12 PM Senator Myrdal moved to Do Pass the bill. Motion is seconded by Senator Estenson.

4:13 PM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 7-0-0.

Senator Paulson will carry the bill.

This bill does not affect workforce development.

4:14 PM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1350, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1350 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

TESTIMONY

HB 1350



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House Bill No. 1350
House Energy and Natural Resources Committee
Testimony Presented by Seth O'Neill, JD, MSW
January 26, 2023

Chairman Porter and members of the Committee, my name is Seth O'Neill and I am representing CAWS North Dakota in opposition to HB 1350. CAWS North Dakota is the statewide coalition of the domestic violence and sexual assault programs in North Dakota.

HB 1350 would allow an individual to petition a court to restore their right to possess a firearm if they are convicted of a misdemeanor crime of domestic violence. However, 18 U.S.C. 922(g) is a federal law that prohibits an individual convicted of a misdemeanor crime of domestic violence from possessing a firearm. As such, this is in direct contradiction to federal law. The Supremacy Clause of the United States Constitution provides that that the U.S. Constitution and the laws of the United States are the supreme law of the land and supersede state laws. Here, a federal law exists prohibiting an individual convicted of a misdemeanor crime of domestic violence from possessing a firearm. North Dakota cannot constitutionally allow an individual to possess a firearm because it is a violation of federal law.

In addition, HB 1350 would require a Court to issue a restoration order cautioning an individual that another state may prohibit the individual from possessing a firearm even though they are allowed to possess one in North Dakota. Rule 3.10 of the North Dakota Code of Judicial Conduct prohibits judges from practicing law. Requiring a judge to give this information to an individual could be considered practicing law. Therefore, this bill would force a judge to violate their judicial code of conduct.



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January 25, 2023

The Honorable Todd Porter
Chair, House Energy and Natl. Resources Committee
600 East Boulevard Avenue
Bismarck, ND 58505

Submitted electronically only:

Re: Testimony in support of HB 1350

Dear Chairman Porter and members of the House Energy and Natural Resources Committee,

I write individually in support of HB1350. I am an attorney in private practice in Fargo. I am a lifelong North Dakota resident, residing in Legislative District 45 for the past twenty years. Prior to law school, I served as a Bismarck Police officer. I retired from the North Dakota Army National Guard after serving twenty-four years, the last eight of which were with the Judge Advocate General Corps.

This bill primarily corrects an anomaly: those convicted of felonies are able to restore firearm possession rights (either automatically by operation of law, or through a court process), but those convicted of certain misdemeanors are prohibited from possessing firearms for life, with no mechanism for reinstatement.

I have visited extensively with Rep. Koppelman regarding the legal background, personal experiences of clients I have represented, and the benefits of this bill. Representative Koppelman has worked extensively with other stakeholders including law enforcement.

I am regrettably unable to testify. Accordingly, Rep. Koppelman has agreed to incorporate my commentary into the comprehensive testimony he will submit.

Simply, this bill clarifies definitional guidelines in existing statute, and provides a mechanism for those convicted of misdemeanor offenses to prove to a Court that they are worthy of restoration of their right to possess a firearm. I respectfully ask for your support for the reasonable and balanced approach of HB 1350, entrusting sentencing courts with authority to

reinstate firearm possession rights for misdemeanor offenders who prove it is appropriate to do so. I ask for this Committee's "do pass" recommendation.

Respectfully submitted,

/s/ Mark A. Friese

Mark A. Friese

MAF:hs

cc: Sen. Ronald Sorvaag, *via email only*
Rep. Carrie McLeod, *via email only*
Rep. Scott Wagner, *via email only*



Domestic Violence
Crisis Center

Domestic Violence Crisis Center, Inc.

PO Box 881 • Minot, North Dakota 58702

Office: 852-2258 • 1-800-398-1098 • Fax: 838-7053 • e-mail: dvcc@minot.com

24 HOUR CRISIS LINE: 857-2200 • RAPE CRISIS LINE: 857-2500



Providing shelter and service to victims of physical, sexual and emotional abuse in North Central North Dakota.





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#16884

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Providing shelter and service to victims of physical, sexual and emotional abuse in North Central North Dakota.



HB 1350

Rep. Ben Koppelman- Testimony

Mr. Chairman and Members of the Committee,

Thank You for the opportunity to introduce HB1350 to you today.

House Bill 1350 would: 1.) provide clarity by including a statutory definition of the term “possesses” in titles 12.1 (Criminal Code) and 62.1 (Possession of Weapons); 2.) provide for mandatory imprisonment for a person committing a specified drug offense while possessing a firearm when the person is prohibited from possession; and 3.) permit misdemeanor domestic violence offenders to petition a court to seek restoration of their firearm possession rights.

A. Section 1

Section 1 proposes adding a clear definition of the term “possesses” to the North Dakota criminal code. The criminal code does not define the term “possess.” The code provides for mandatory prison terms for armed offenders who “possess” a firearm while committing specified drug felonies. N.D.C.C. § 12.1-32-02.1.

Criminal law is subject to constitutional challenge if vague. A principal function of lawmaking is to create minimum guidelines for the reasonable police officer, judge, or jury charged with enforcement of the statute. Secondly, the law must provide adequate warning of prohibited conduct which is clear to a reasonable person. By clearly defining the term “possesses,” the Assembly provides clarity to those obligated to follow the law, and to those responsible for enforcing it.

B. Section 2

Currently, section 12.1-32-02.1 provides for mandatory imprisonment for armed offenders who: 1.) use a firearm (or dangerous weapon, explosive, or destructive device) while committing a felony offense; or 2.) who “possesses or has within immediate reach” a firearm (or dangerous weapon, explosive, or destructive

device) while committing a specified felony drug offense. Those felony drug offenses include possession, manufacture, delivery, or attempt offenses.

The reach of the current statute is expansive—likely far more expansive than ever intended. For example, assume a student attending college in Fargo owns a firearm and stores it in his bedroom at his parent’s home in Williston. If he grows a marijuana plant (i.e., manufacturing) in his Fargo apartment, or if while in Fargo he gives a friend a marijuana edible that he purchased lawfully in Minnesota (this constitutes delivery of marijuana under existing law), he faces a mandatory two-year prison sentence for committing a specified felony drug offense while merely possessing a firearm. This is true even though the firearm was stored 400 miles away in Williston, and even though it was not used in the commission of the offense. And the mandatory sentence applies even if the offender has no prior arrests.

The proposed amendment would preserve a mandatory period of imprisonment for a felony drug offense for threatening or menacing another with a firearm while committing a felony, and for instances in which the a prohibited person possesses a firearm while committing an offense. The proposed amendment would reduce the likelihood of a successful legal challenge to the statute based upon the *Bruen* decision. The proposed amendment would also avoid a mandatory sentence for unintended circumstances like the example above.

C. Section 3

This section would add the same definition of “possesses” to Chapter 62.1 (Possession of Weapons) as the proposed definition for the criminal code as outlined in section 1. Providing clarity of a specific definition will serve the same positive purposes outlined above.

D. Section 4

Currently, section 62.1-02-01 provides a prohibited person may not own a firearm or have a firearm “in possession or under control” after conviction and for either five or ten years following release from custody, parole, or probation (whichever is latest). This section would eliminate the term “under control,” which is undefined

and ambiguous. The proposal would continue to provide criminal penalties for owning or “possessing” a firearm when prohibited.

E. Section 5

This section would: 1.) clarify a court may restore firearm possession rights for felonies occurring in this state only; 2.) provide a mechanism for restoration of firearm possession rights for misdemeanor crimes of domestic violence occurring in this state; and 3.) require that a court include specific restorative and cautionary language in any order restoring firearm possession rights.

State law provides for either a five-year or ten-year firearm possession prohibition for a felony conviction (ten if the offense involves violence or intimidation, otherwise five). N.D.C.C. § 62.2-02-01(1)(a). The same statute provides for a five-year prohibition for class A misdemeanor offenses involving violation or intimidation.

For any probation (supervised or unsupervised) for all misdemeanors and all felonies, as a condition of probation, the court must order that the probationer may not possess a firearm, destructive device, or dangerous weapon. N.D.C.C. § 12.1-32-07(3). A court may deviate from this requirement for most offenses, but not misdemeanor crimes of domestic violence, which are usually class B misdemeanors.

Federal law provides a lifelong prohibition against possessing a firearm for any person convicted of a misdemeanor crime of domestic violence. 18 U.S.C. § 922(g)(9). While federal law permits a person to apply to the Bureau of Alcohol Tobacco and Firearms for relief from a firearm disability, since 1992, Congress has explicitly and continuously prohibited ATF from processing applications. Without an underlying BATF decision, Federal courts lack authority to provide relief. *United States v. Bean*, 537 U.S. 71 (2002). As a result, there is no federal mechanism to reinstate gun possession rights for a misdemeanor domestic violence conviction.

Under 18 U.S.C. § 921(a)(20) and (a)(33), the federal possession prohibition does not apply to a person who has been pardoned, has had civil rights restored, or has had the conviction expunged or set aside. Under these provisions, restoring civil rights is governed by the law of the convicting jurisdiction. *Beecham v. United*

States, 511 U.S. 368, 371 (1994). If HB1350 is adopted, for a North Dakota domestic violence conviction, this section would permit a North Dakota court to restore an offender's civil rights, reinstating firearm possession rights. Restoration would occur only if the offender proves, by clear and convincing evidence, that they have: 1.) paid all fines imposed; 2.) served all ordered imprisonment; 3.) successfully completed all conditions of probation; and 4.) they are not likely to act in a manner dangerous to the safety of others.

If adopted, this section would also require the court's restoration order to explicitly reinstate civil rights, and to provide cautionary instructions to the offender.

This proposal corrects an existing anomaly: an offender who commits felony domestic violence has their firearm possession rights restored automatically after, at most, ten years. But a misdemeanor domestic violence offender loses their rights for life. If adopted, unlike the automatic restoration for class A misdemeanor and felony offenses, those seeking restoration for a misdemeanor domestic violence offense must prove to a court, by clear and convincing evidence, that restoration is warranted.

CONCLUSION

Domestic violence is intolerable, and some domestic offenders should never regain the right to possess a firearm. But offenders convicted of misdemeanor crimes who have proven rehabilitation and worthiness should not be dispossessed of firearm possession rights for life.

I respectfully ask for your support for the reasonable and balanced approach of HB 1350, entrusting sentencing courts with authority to reinstate firearm possession rights for misdemeanor offenders who prove it is appropriate to do so. I ask for this Committee's "do pass" recommendation.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1350

Page 10, line 19, overstrike "of" and insert immediately thereafter "or order deferring imposition of sentence for"

Page 10, line 20, replace "occurring" with "by a court"

Page 10, line 30, replace "due to" with "based on"

Page 10, line 31, replace the first "of" with "or order deferring imposition of sentence for"

Page 10, line 31, replace "occurring in" with "by a court of"

Page 11, line 15, replace "subsection 2" with "this section"

Page 11, line 20, after the second "state" insert "or federal law"

Renumber accordingly

HB 1350

Rep. Ben Koppelman- Testimony

Madame Chairman and Members of the Committee,

Thank You for the opportunity to introduce HB1350 to you today.

House Bill 1350 would: 1.) provide clarity by including a statutory definition of the term “possesses” in titles 12.1 (Criminal Code) and 62.1 (Possession of Weapons); 2.) provide for mandatory imprisonment for a person committing a specified drug offense while possessing a firearm when the person is prohibited from possession; and 3.) permit misdemeanor domestic violence offenders to petition a court to seek restoration of their firearm possession rights.

A. Section 1

Section 1 proposes adding a clear definition of the term “possesses” to the North Dakota criminal code. The criminal code does not define the term “possess.” The code provides for mandatory prison terms for armed offenders who “possess” a firearm while committing specified drug felonies. N.D.C.C. § 12.1-32-02.1.

Criminal law is subject to constitutional challenge if vague. A principal function of lawmaking is to create minimum guidelines for the reasonable police officer, judge, or jury charged with enforcement of the statute. Secondly, the law must provide adequate warning of prohibited conduct which is clear to a reasonable person. By clearly defining the term “possesses,” the Assembly provides clarity to those obligated to follow the law, and to those responsible for enforcing it.

B. Section 2

Currently, section 12.1-32-02.1 provides for mandatory imprisonment for armed offenders who: 1.) use a firearm (or dangerous weapon, explosive, or destructive device) while committing a felony offense; or 2.) who “possesses or has within immediate reach” a firearm (or dangerous weapon, explosive, or destructive device) while committing a specified felony drug offense. Those felony drug offenses include possession, manufacture, delivery, or attempt offenses.

The reach of the current statute is expansive—likely far more expansive than ever intended. For example, assume a student attending college in Fargo owns a firearm

and stores it in his bedroom at his parent's home in Williston. If he grows a marijuana plant (i.e., manufacturing) in his Fargo apartment, or if while in Fargo he gives a friend a marijuana edible that he purchased lawfully in Minnesota (this constitutes delivery of marijuana under existing law), he faces a mandatory two-year prison sentence for committing a specified felony drug offense while merely possessing a firearm. This is true even though the firearm was stored 400 miles away in Williston, and even though it was not used in the commission of the offense. And the mandatory sentence applies even if the offender has no prior arrests.

The proposed amendment would preserve a mandatory period of imprisonment for a felony drug offense for threatening or menacing another with a firearm while committing a felony, and for instances in which the a prohibited person possesses a firearm while committing an offense. The proposed amendment would reduce the likelihood of a successful legal challenge to the statute based upon the *Bruen* decision. The proposed amendment would also avoid a mandatory sentence for unintended circumstances like the example above.

C. Section 3

This section would add the same definition of "possesses" to Chapter 62.1 (Possession of Weapons) as the proposed definition for the criminal code as outlined in section 1. Providing clarity of a specific definition will serve the same positive purposes outlined above.

D. Section 4

Currently, section 62.1-02-01 provides a prohibited person may not own a firearm or have a firearm "in possession or under control" after conviction and for either five or ten years following release from custody, parole, or probation (whichever is latest). This section would eliminate the term "under control," which is undefined and ambiguous. The proposal would continue to provide criminal penalties for owning or "possessing" a firearm when prohibited.

I respectfully ask for your support for the reasonable and balanced approach of HB 1350, I ask for this Committee's "do pass" recommendation.