

**Senate Bill 2106**  
**House Judiciary Committee**  
**Testimony Presented by Sara Behrens**  
**March 1, 2023**

Good afternoon Chair Klemin, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I am here today in support of Senate Bill 2106.

Senate Bill 2106 repeals sections 29-16-01 29-21-16, and 29-22-33.

All three sections contain antiquated terms referring to double jeopardy, which is covered by both the United States Constitution and the North Dakota Constitution. Amendment V of the United States Constitution states in part: "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb . . ." Section 12 of Article 1 of the Constitution of North Dakota states:

In criminal prosecutions in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf; and to appear and defend in person and with counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law.

Additionally, N.D.C.C. § 29-01-07 states:

No person can be twice put in jeopardy for the same offense, nor can any person be subjected to a second prosecution for a public offense for which that person

has once been prosecuted and convicted, or acquitted, or put in jeopardy, except as is provided by law for new trials.

These sections were originally enacted in 1877. In 1895, the wording was changed slightly to what it is today. None of these statutes has been amended since 1895.

§ 29-22-33 has never been cited in a case and § 29-21-16 was only cited once as a typo. The citation should have been to § 29-21-26. Only § 29-16-01 has ever been cited and only 4 times regarding “once in jeopardy.”

A defendant no longer makes a plea of once in jeopardy. Instead, a defendant makes a plea of guilty or not guilty. Double jeopardy would be asserted in a motion or as a defense at trial.

Rule 11 of the North Dakota Rules of Criminal Procedure governs pleas. Rule 31 of the North Dakota Rules of Criminal Procedure governs jury verdicts, including special verdicts. Rule 31 states in what circumstances the issue of double jeopardy is a jury issue. Typically, this would be asserted in a motion to dismiss prior to trial.