

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