

Senate Judiciary Committee

Engrossed House Bill 1213

March 22, 2023

Madame Chair, Members of the Committee

My name is Jonathan Byers and I am the lobbyist for the North Dakota States Attorney's Association. I testify in opposition to Engrossed House Bill 1213.

This bill is an example of one that has noble intentions: to prevent politically based prosecutions against those who use a gun in self-defense. Despite its good intentions, the bill is also an example of one that will have horrible unintended consequences.

North Dakota's criminal justice system is set up to provide multiple checkpoints where the State has to prove a lack of self-defense. (See attached pattern jury instruction K-3.01)

- Filing a charge
- Preliminary hearing
- Close of the State's case—Rule 29 motion for judgment of acquittal
- Jury verdict

At each of those stages, the prosecutor carries the burden to show a lack of self-defense. It makes no sense that under subsection 2 of the bill, if someone is found guilty "due to the justification of self-defense," the same judge who found the State had met its burden at each of the stages is going order the State to reimburse the defendant for all reasonable costs incurred in the defense.

The bill will have a chilling effect on the filing of charges, and probably even on those who decide to undertake a career as a prosecutor. It is not needed here. We ask for a DO NOT PASS vote.

K - 3.01 Additional Element of Offense - Nonexistence of Defense 2003 (North Dakota Jury Instructions - Criminal (2023 Edition))

K - 3.01. Additional Element of Offense - Nonexistence of Defense 2003

Evidence has been presented that the Defendant [state the defense]. The State must prove beyond a reasonable doubt, as an additional element of the offense charged, that the Defendant was not [state the defense]. The Defendant does not have the burden of proof as to this defense. If the State has failed to prove beyond a reasonable doubt that the Defendant did not [state the defense], the defendant is entitled to a verdict of not guilty.

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NDCC 12.1-01-03(1) - (2)

State v. Olander, 1998 ND 50, 575 NW2d 658

State v. Thiel, 411 NW2d 66 (ND 1987)

NOTE: This instruction does not apply to affirmative defenses. For affirmative defenses, see NDJI K - 4.00.