

## 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.