

**SENATE JUDICIARY COMMITTEE
SENATOR DIANE LARSON, CHAIR
FEBRUARY 6, 2023**

**TOM ERHARDT, DIRECTOR, PAROLE AND PROBATION
PRESENTING TESTIMONY IN OPPOSITION REGARDING SENATE BILL
2385**

Chairwoman Larson and members of the Senate Judiciary Committee, my name is Tom Erhardt, and I am the Director of North Dakota Parole and Probation, a division of the North Dakota Department of Corrections and Rehabilitation. I stand before you today to provide testimony in opposition of Senate Bill 2385.

Senate Bill 2385 would amend NDCC § 12.1-23-02 Theft of Property to include a criminal charge for a public servant acting under governmental authority or color of law who knowingly seizes or confiscates private property before providing the owner of the property with due process of law.

This law would be problematic for parole and probation officers in the official course of their duties. Parole and probation officers are licensed peace officers, as authorized by N.D.C.C. § 12-59-20. Officers who conduct searches of people supervised by parole and probation frequently find contraband that the individual on supervision is prohibited from possessing by law or by the conditions of supervision. Examples include illegal narcotics, dangerous weapons, firearms, and electronic devices containing sexually explicit images of children. These searches are authorized by the conditions of supervision. In 2021 and 2022, officers conducted 583 searches, confiscating over 31 pounds of

illegal narcotics, 57 illegally possessed firearms (handguns, rifles, and shotguns), and among other prohibited items, 2 live hand grenades.

Senate Bill 2385 would require officers who find these items to provide due process of law before confiscating. Simply put, I believe the officer would have to let the owner keep the items until the due process hearing or the officer could face a criminal charge of theft of property. This would put the community at considerable risk, as these items are prohibited from possession by these individuals for a reason. I have included pictures of a few of the weapons found during parole and probation authorized searches for your reference at the end of my testimony.

The current procedure for parole and probation officers who confiscate property is to provide the owner with an inventory of the items seized. Items that are prohibited by supervision conditions but are not unlawful may be turned over to a responsible party designated by the owner or kept in a locked storage compartment as evidence of a supervision violation. When the individual is finished with supervision, the individual may request to have the property returned. However, if the item is used as evidence of a supervision violation, final disposition of the property may only be completed at the order of the court of record, the North Dakota Parole Board, or at the directive of the Department.

Notwithstanding other provisions of N.D.C.C. Chapter 29-31.1, Property Forfeiture and Disposition in the case of forfeitable property seized and held as evidence of the commission of a criminal offense, the court in which a criminal prosecution was commenced may issue its order upon motion, and after a

hearing, unless waived for disposition of property in accordance with N.D.C.C. Chapter 29-31.1. I have also included as an attachment, parole and probation policy "Preservation of Physical Evidence" for your reference.

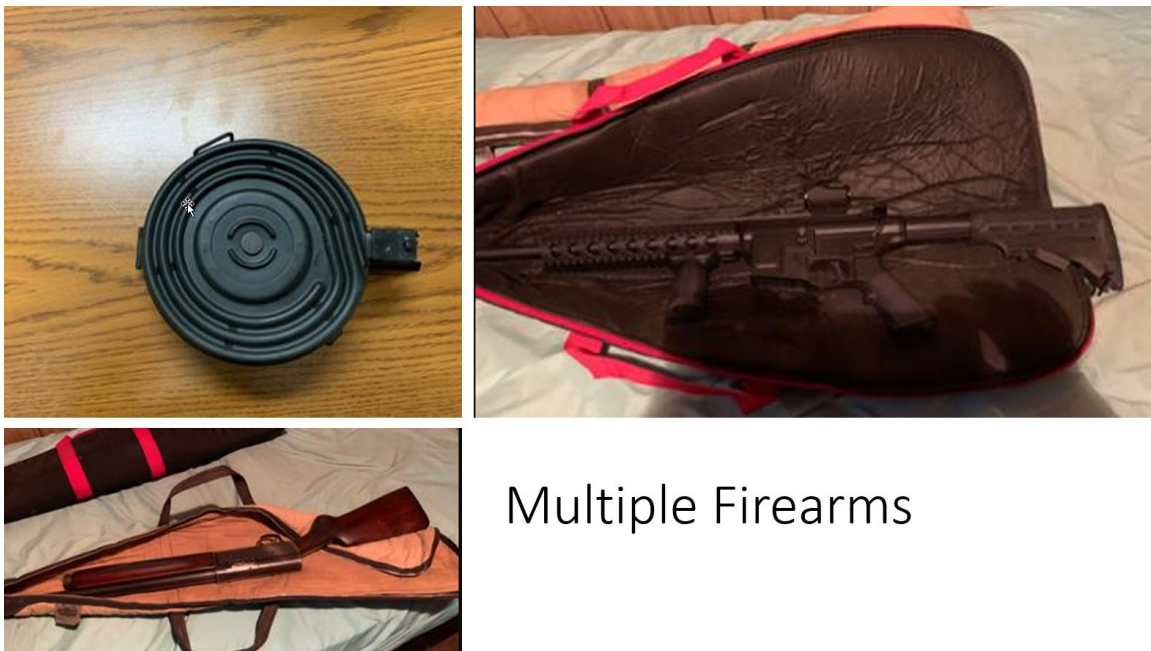
Depending on how the statute is interpreted, we are also concerned about how it may be applicable to individuals in correctional facilities, as there is no exception for them. The Department of Corrections and Rehabilitation provides the required due process to seize property and contraband during intake and while an individual is in a facility. However, due process is provided after the property is taken, which could be problematic for SB 2385.

In conclusion, SB 2385 in its current format could require parole and probation staff to return illegal and dangerous items back to criminal suspects pending a due process hearing or face a criminal charge. In the case of parole and probation searches, department policy and current statute, N.D.C.C. Chapter 12-31.1, already have processes in place that are working. Additionally, SB 2385 could have a detrimental impact on the safety and security of correctional facilities.

Therefore, I urge you to vote do not pass for SB 2385 I will stand to answer any questions I can. Thank you.

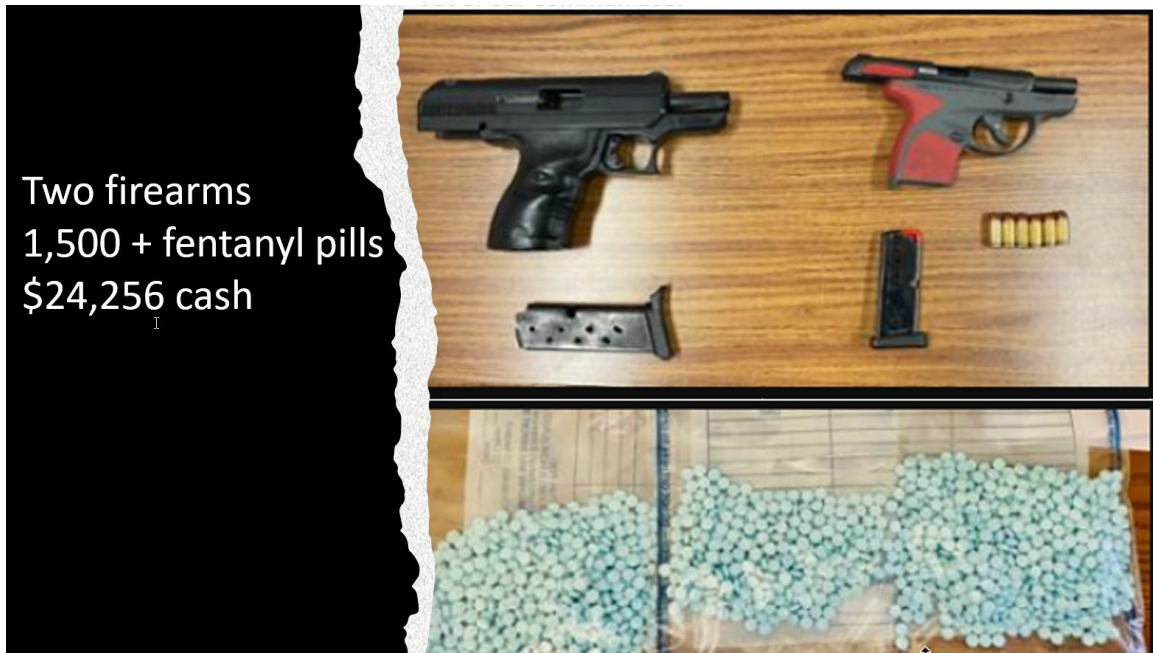


Figure 1 AR-10 rifle, body armor, loaded magazines found by a parole officer



Multiple Firearms

Figure 2 Multiple firearms and a 100-round drum magazine found by a parole officer



Two firearms
1,500 + fentanyl pills
\$24,256 cash

Figure 3: Firearms, fentanyl pills, and cash proceeds from narcotics distribution found by parole officers



Figure 4: Two live explosive devices found by parole officers