

**JUDICIARY COMMITTEE**  
**FEBRUARY 4<sup>TH</sup>, 2025**  
**TESTIMONY OF LUKE KAPELLA**  
**OFFICE OF THE ATTORNEY GENERAL**  
**HOUSE BILL 1528**

Chairman Klemin and Members of the Judiciary Committee:

My name is Luke Kapella. I am a Special Agent with the North Dakota Bureau of Criminal Investigation (NDBCI). I am here today to advocate for the passage of a bill for an Act to amend and reenact sections 12.1-21-01 and 12.1-21-02 of the North Dakota Century Code, relating to arson and endangering by fire or explosion; and to provide a penalty. This legislation is essential to 1) help protect the first responders of North Dakota and 2) to hold arsonists accountable on both intentionally and recklessly started fires. Each of you have been given an amended version that I'll detail for you.

**Introduction**

Starting 2022, the North Dakota Bureau of Criminal Investigation (NDBCI), the North Dakota State Fire Marshals Office (NDSFM), and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), formed the North Dakota Fire and Arson Strike Team (ND FAST) under State Fire Marshal Doug Nelsen and BCI Director Lonnie Grabowska. The goal of the ND Fire and Arson Strike Team is to provide a cooperative effort amongst experts in fire and law enforcement, to investigate, assist, and aid local agencies in fire investigations throughout the State of North Dakota and on Tribal Lands.

One of the driving factors in the creation of the ND FAST was to bring the perspective of licensed law enforcement personnel into fire investigations, specifically highly trained and experience criminal investigators. Typically fire investigators with the State Fire Marshals Office and local fire departments are not sworn peace officers or had ever been trained in the complexities of criminal investigations and the court process. Before the creation of the ND FAST, if a fire investigator uncovered suspicious or criminal activity at a fire, they would have to turn that aspect of the investigation over to law enforcement. Also typical, was that the law enforcement officer had little knowledge of fire investigation, resulting in a very inefficient and ineffective process. ND FAST uses a cooperative effort of fire and law enforcement to investigate fires. This brings together expertise of both disciplines, while also allowing for cross training between disciplines.

The ND FAST has been implemented Statewide for the last couple of years to great success. The Team has investigated a wide variety of fires from small, abandoned farmsteads to large

commercial grain elevators. The ND FAST has also investigated a wide range of criminal arsons, from simple set fires to violent homicides. The ND FAST, through their expansive investigations, has identified that current fire laws in North Dakota need to be improved. These laws need to be enhanced to 1) hold individuals accountable when they intentionally, knowingly, or recklessly start fires and 2) to protect the first responders who often put their lives in danger in responding to these fires; this includes firefighters, police, and EMS personnel.

## **ARSON**

### **ND FAST INVESTIGATIONS EXAMPLES**

#### 1. 2022 – Wells County, ND

- a. A domestic violence incident occurred between spouses at their residence. Law enforcement provided assistance in moving the woman to safety away from the residence. Fifteen minutes later the husband started the house on fire, specifically their bed and the couch where his wife had been sleeping. The fires he set resulted in extensive damage to the home and the deaths of multiple house cats. The home had a mortgage against it, but the owners had let the insurance expire. The courts ruled that the current arson statute did not fit the details of the case. Even though a husband destroyed the home of his wife, the residence technically also belonged to him; as the Century Code currently stands, it is not illegal to destroy your own property. Therefore, criminal charges could not be brought forth in this case.

#### 2. 2022 – Ward County, ND

- a. An adult child burned a residence by intentionally starting fires in multiple locations. The home was jointly owned by the adult child and his parents. However, the parents carried the insurance in their names only. The parents filed an insurance claim for damages caused by the fires their adult child started, which destroyed the home. The prosecution deemed that there could be no prosecution for arson. In this case the adult child destroyed property that he owned but did not file an insurance claim.

#### 3. 2024 – Rugby, ND

- a. A domestic altercation between spouses occurred at their residence. In an act of rage, the husband set fire to the couples' vehicle that was parked in the driveway, destroying it. The vehicle was jointly owned, however that was one his wife typically drove. There was also no insurance on the vehicle. The courts stated that the arson statute did not apply, ruling that the vehicle was

considered joint property, and no insurance claim was made. Therefore, it was legal for the husband to destroy this jointly owned property, which was parked on jointly owned property, even though it resulted in significant hardship to his wife.

As described in the above cases, the Courts and prosecutors have established that “joint” property, like that of spouses or parents and adult children, is NOT “property of another.” Therefore, based on the current reading of the arson statute, destroying one’s own property is not arson, even when another person has joint ownership, unless a claim for insurance is filed in an attempt to profit from the fire damage. Domestic violence incidents, like the incidents I described, are a prime example of how this loophole in current Century Code is being exploited; individuals committing this type of arson cannot be criminally charged for their actions. If those same domestic violence incidents had occurred with a person using a firearm or knife to terrorize the victim, the aggressor could have been prosecuted for terrorizing and destruction of property. When an individual utilizes fire as a weapon to harm or terrorize a victim and destroy property, there is no criminal repercussion related to the fire. The purpose of this bill is to hold individuals criminally responsible when fire is used as a weapon to terrorize another person or to destroy jointly owned property, including that of a spouse or a bank holding a mortgage to that property.

## **ENDANGERING BY FIRE OR EXPLOSION**

### **ND FAST INVESTIGATION EXAMPLES**

#### 1. 2024 - Bismarck, ND

- a. An individual was squatting in the garage of his friend’s residence. The individual admitted to being intoxicated and using drugs while in the garage. The individual stated that after using drugs, he passed out in a truck which was parked inside the garage. The individual awoke to the smell of smoke and observed fire inside the vehicle. Unable to extinguish the fire, the individual fled the residence, along with others who had been asleep at the time the fire started. Multiple first responders arrived to manage this dangerous situation as the fire intensified at the residence, engulfing the structure. Police, Emergency Medical Services, and Fire Firefighters all responded to protect lives and mitigate damage. These first responders endangered their own lives to serve and protect the public.

This example highlights a situation in which an individual under the influence of intoxicating substances, accidentally or intentionally, started a fire. The actions of this individual directly affected the lives of many other individuals: 1) the people sleeping in the home who were in imminent danger of the fire, 2) the police officers who rushed to the scene to aid and search for victims of the fire, 3) the firefighters working diligently to extinguish the fire before it spread to neighboring homes, 4) the EMS personnel giving aid to those affected by the fire, and 5) the neighboring residents who had to evacuate their homes in case of fire spread which would endanger their lives and property. The actions of one individual under the influence affected and engaged all these other lives. It is the purpose of this legislation to hold individuals accountable whose actions, particularly while under the influence of drugs and alcohol, placing others in danger by way of fire.

Furthermore, this bill specifies what a “person in danger” includes. In past cases, charges of Endangering By Fire have been dismissed by the courts due to the fact that the endangerment claim wasn’t valid for first responders like firefighters. Dismissal was based on the idea that they could not be endangered by fire because it is “what they signed up for,” or “it was part of the job”. Additionally cited in dismissals was the fact that firefighters wear fire-resistant clothing and protective equipment to shield them from fire danger. I strongly disagree, and we must act to provide stronger protections for North Dakota firefighters. As a law enforcement officer if I was shot in my ballistic vest during the course of my duties, the suspect would be charged with attempted homicide. The case would not dismiss simply because I have a vest and a gun, and it is “what I signed up for.” Fire scenes are very dangerous for firefighters; 89 firefighters were lost in the line of duty in the U.S. in 2023. And that danger extends to all first responders who respond to a fire emergency. Furthermore, first responders experience not only direct dangers, like heat and falling debris, but also indirect dangers such as chemicals and cancerous vapors that may have long-term negative health consequences for them. The individual who places these first responders in danger should be held accountable.

### **Conclusion**

Since the creation of the ND Fire and Arson Strike Team three years ago, the need to revise North Dakota fire laws has become strikingly apparent. This legislation addresses the need to clearly define the act of arson and to protect victims when fire is used as a weapon to deprive or terrorize them. This legislation also clarifies that when a person who is intoxicated with alcohol or drugs recklessly causes a fire, they can be held responsible for endangering the lives of others in that fire. Finally, this legislation clarifies who is considered endangered in the emergency response to a fire. North Dakota needs to update the Century Code to hold accountable individuals who commit arson or endanger others by fire. The ultimate goal of

this legislation is protecting the citizens of our state and the first responders who serve and protect them.

Thank you for your time and consideration. I respectfully ask you to support this important legislation.