

2017 SENATE JUDICIARY

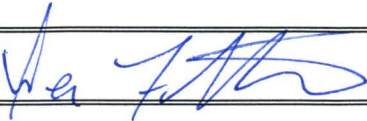
SB 2125

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2125
1/9/2017
26680

- Subcommittee
 Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to possession of a firearm or dangerous weapon.

Minutes: **Testimony attached #**

1

Chairman Armstrong called the committee to order on SB 2125. All committee members were present.

Ken Sorenson, Special Assistant to Attorney General – Testified in support of bill (see attachment 1.)

Chairman Armstrong: “Does this change exclude correctional officers from concealed carry regulations?”

Ken Sorenson: “It doesn’t change it either way.”

Chris Dodson, member of North Dakota Catholic Conference – Testified in opposition to the bill, just the way it’s written.

“We oppose the bill but only as it is written. Our position is that church leaders should always have their own say into what weapons are allowed or not allowed in their facilities. This bill looks like it will broadly open up regulations where correctional officers can have weapons in church areas.”

Senator Larson: “Ken, could I ask you a question? This wouldn’t conflict anyway with carrying it in church without the church’s position, which we passed in the last session, would it?”

Ken Sorenson: “I do not see any conflict with the amendment as drafted.”

Chairman Armstrong closed the hearing on SB 2125.

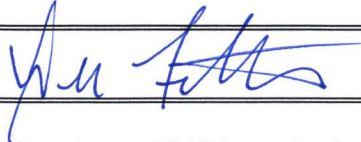
No motion was made.

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2125 Committee Work
1/10/2017
26723

- Subcommittee
 Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to possession of a firearm or dangerous weapon.

Minutes: **Testimony attached #**

Chairman Armstrong called the committee to order SB 2125. All committee members were present.

Amendment was passed out to committee members (see attachment)

Senator Myrdal motioned to adopt the amendment. Senator Larson seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Senator Luick motioned for a Do Pass as Amended. Senator Myrdal seconded.

A Roll Call Vote was taken. Yea:6 Nay: 0 Absent: 0
The motion carried.

Chairman Armstrong carried the bill.

Chairman Armstrong closed the hearing on SB 2125.

January 10, 2017

ET
1-10-17
pg 1 of 1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2125

Page 1, line 13, after "officer" insert an underscored comma

Page 1, line 15, after "12-44.1" insert ". A correctional officer employed by the department of corrections and rehabilitation may carry a firearm only as authorized in section 12-47-34. A correctional officer employed by a correctional facility governed by chapter 12-44.1 may carry a firearm only as authorized in section 12-44.1-30"

Renumber accordingly

11/10/17

Date:
Roll Call Vote #:

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2125

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17,8096.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Myrdal Seconded By Larson

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Osland	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

11/10/17
2

Date:
Roll Call Vote #:

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2125

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.8096.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider

Motion Made By Luick Seconded By Myrdal

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Osland	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Armstrong

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2125: Judiciary Committee (Sen. Armstrong, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2125 was placed on the Sixth order on the calendar.

Page 1, line 13, after "officer" insert an underscored comma

Page 1, line 15, after "12-44.1" insert ". A correctional officer employed by the department of corrections and rehabilitation may carry a firearm only as authorized in section 12-47-34. A correctional officer employed by a correctional facility governed by chapter 12-44.1 may carry a firearm only as authorized in section 12-44.1-30"

Renumber accordingly

2017 HOUSE JUDICIARY

SB 2125

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2125
3/7/2017
28764 & 28801

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to possession of a firearm or dangerous weapon.

Minutes:

1

Chairman K. Koppelman: Opened the hearing on SB 2125.

Ken Sorenson, Special Assistant to the Attorney General: (#1) Housekeeping bill. (1:17-5:21) This amendment is basically to reauthorize correctional officers employed by the DOCR and in county correctional facilities and regional correctional centers to use a taser type weapon.

Representative Paur: Where does it say you can carry tasers?

Ken Sorenson: Multiple weapons includes taser type weapons. So it does authorize them to carry that dangerous type of weapon. It is in 62.1-02-05 it states this.

Chairman K. Koppelman: Is there anything in law that is traditionally allowed correctional officers to always carried taser's that prompted the bill?

Ken Sorenson: For the DOCR they have a statute for correctional officers to carry them on DOCR property. They have a very limited timeframe where they can carry under contract. The US Marshall service typically required armed transports.

Representative Klemin: I am not sure this bill does what you wanted it to do? 26.1-02-05 relates to the possess of a firearm or dangerous weapon. Subsection 2 contains an exception for law enforcement officers and then correction officers by the new language. What you are putting in this bill a correctional officer may carry a firearm only as authorized in by 12-47-34 which in your testimony is only for firearms. Then the next sentence says the correctional officer may carry a firearm only as authorized by 12-44.1-30. So when we look at this that is correctional officers authorized to carry weapons. What you are putting in this bill is a correctional officer may carry a firearm only as authorized by 12-44.1-30 and that section is weapons including a firearm. Are we really allowing them to carry tasers if you say it is limited to firearms on line 18?

Ken Sorenson: Yes we are. The language about the restrictions on firearms came at Senate Judiciary because they wanted to make sure correctional officers were limited in their ability to carry firearms under their respective statutes. We have statutes where they are being accepted out of some of this language of 62.1-02-05 also. It has the effect of saying they can carry their tasers on the premises but they can only carry their firearms as authorized under the other statutes.

Representative Klemin: So they can carry a taser on the premises only?

Ken Sorenson: Yes.

Chairman K. Koppelman: I believe some of those bills did deal with public gatherings?

Ken Sorenson: There is a number of bills. HB1278 is one of those that amends the definition of government building and also amends the definition of public gathering. Engrossed HB 1395; that moves around the language about the multiple voltage projectile devices. SB 2178 is one of those bills

Representative Jones: It appears to me we are going to have to add a dangerous weapon in section 12-44.1-30. It appears to me we are still falling short of authorizing them to have a dangerous weapon.

Ken Sorenson: It would work one of two ways; it would be to take the Senate amendment out or add dangerous weapon to firearm.

Representative Jones: As I am looking at the language on the underlined language where it says may carry a firearm only as authorized we could have it say carry a dangerous weapon or a firearm as authorized in Section 12-44.1-30.

Ken Sorenson: We could either remove the language that the Senate Judiciary put in or add in the dangerous weapon.

Representative Klemin: On line 18 we should have the language the same in 12.44.1-30 so it would say carry a dangerous weapon including a firearm only as authorized by the section. Then we would connect those two more accurately.

Representative Paur: The listing for dangerous weapons is quite extensive. It includes be be guns. Why are we using fire arms at all?

Ken Sorenson: The definition of a dangerous weapon is very extensive. We are using firearm because that is what they use. No correctional facility will typically have a firearm in the facility, but they will have lesser weapons such as the tasers or pepper spray.

Representative Roers Jones: To avoid all these things wouldn't it be simpler to just refer to the type of electronic device that we want them to be able to use in this section rather than opening it up to all of the possible dangerous weapons?

Ken Sorenson: I think that would be difficult. The code uses dangerous weapons quite often throughout the code. That is why we continued with that.

Representative Klemin: Rep. Roers Jones, I don't see your concern the same. When we go back to this reference to 12-44.1-30 there are only going to be allowed to carry weapons as allowed by the administrator of the correctional facility so this is not an open blank check to carry any kind of dangerous weapon only ones that the administrator allows them to carry.

Ken Sorenson: Yes that is correct. Especially with the correctional officers. Besides having their use of force policies administrator approved they also have to go up to a higher level. DOCR has oversight over all the correctional facilities and they also have policies and procedures have to pass regulations of DOCR.

Opposition: None

Neutral: None

Hearing closed.

Representative Klemin: I would like to propose an amendment.

Motion Made by Rep. Klemin on page 1, line 18 it would read may carry a dangerous weapon, including a firearm. Seconded by Rep. Satrom

Discussion:

Representative Vetter: Do you want to do the same thing on line 16?

Representative Klemin: when you look at 12-47-34; that only talks about firearms; no other weapons.

Voice vote carried.

Do Pass as Amended Motion Made by Rep. Klemin; Seconded by Rep. Maragos

Discussion:

Roll Call Vote: 15 Yes 0 No 0 Absent Carrier: Rep. Paur

Representative Jones: I am surprised we didn't put an emergency clause on that.

Tape # 28801 begins

Motion Made by Rep. Nelson that we reconsider our action where we just gave a do pass recommendation to engrossed SB 2125 for purposes of adding an emergency clause. Seconded by Representative Johnston.

Discussion:

Voice vote carried. Then did a roll call vote: 15 Yes 0 No 0 Absent

Rep. Nelson Made a motion to add the emergency clause; Seconded by Rep. Jones

Discussion:

Voice vote carried.

Do Pass as Amended by Rep. Vetter; Seconded by Rep. Maragos

Discussion:

Roll Call Vote: 15 Yes 0 No 0 Absent Carrier: Rep. Paur

Closed.

3/7/17 DF

17.8096.02001
Title.03000

Adopted by the Judiciary Committee

March 7, 2017

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2125

Page 1, line 2, after "weapon" insert "; to provide a penalty; and to declare an emergency"

Page 1, line 18, after "firearm" insert "or dangerous weapon"

Page 2, after line 29, insert:

"**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2125**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: Page 1, line 18 it would read may carry a dangerous weapon, including a firearm.

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Klemin Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

0
Total (Yes) _____ No _____

Absent _____

Floor Assignment Rep.

If the vote is on an amendment, briefly indicate intent:

Voice vote carried.

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2125**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Klemin Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	X		Rep. Hanson	X	
Vice Chairman Karls	X		Rep. Nelson	X	
Rep. Blum	X				
Rep. Johnston	X				
Rep. Jones	x				
Rep. Klemin	x				
Rep. Magrum	x				
Rep. Maragos	x				
Rep. Paur	x				
Rep. Roers-Jones	x				
Rep. Satrom	x				
Rep. Simons	x				
Rep. Vetter	x				

0
Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep. Paur

If the vote is on an amendment, briefly indicate intent:

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2125**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Nelson Seconded By Rep Johnston

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	X		Rep. Hanson	X	
Vice Chairman Karls	X		Rep. Nelson	X	
Rep. Blum	X				
Rep. Johnston	X				
Rep. Jones	x				
Rep. Klemin	x				
Rep. Magrum	x				
Rep. Maragos	x				
Rep. Paur	x				
Rep. Roers-Jones	x				
Rep. Satrom	x				
Rep. Simons	x				
Rep. Vetter	x				

⁰
Total (Yes) 15 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2125**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: **Add Emergency clause**

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Nelson Seconded By Rep Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

*Voice Vote
All aye*

0 Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice vote carried.

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2125**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: **17.8096.02001**

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Vetter Seconded By Rep Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	x		Rep. Hanson	x	
Vice Chairman Karls	X		Rep. Nelson	X	
Rep. Blum	x				
Rep. Johnston	x				
Rep. Jones	x				
Rep. Klemin	x				
Rep. Magrum	x				
Rep. Maragos	x				
Rep. Paur	x				
Rep. Roers-Jones	x				
Rep. Satrom	x				
Rep. Simons	x				
Rep. Vetter	x				

0
Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep. Paur

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2125, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2125 was placed on the Sixth order on the calendar.

Page 1, line 2, after "weapon" insert "; to provide a penalty; and to declare an emergency"

Page 1, line 18, after "firearm" insert "or dangerous weapon"

Page 2, after line 29, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2017 TESTIMONY

SB 2125

①

**SENATE BILL 2125
SENATE JUDICIARY COMMITTEE
JANUARY 9, 2017**

TO: Kelly Armstrong, Chairman, Senate Judiciary Committee, and Members of the Senate Judiciary Committee.

Ken Sorenson, Special Assistant Attorney General, submits this written testimony in support of Senate Bill 2125 on behalf of the North Dakota Department of Corrections and Rehabilitation ("ND DOCR").

Senate Bill 2125 was submitted at the request of the ND DOCR to amend N.D.C.C. § 62.1-02-05 to include correctional officers employed by the ND DOCR and by correctional facilities governed by N.D.C.C. chapter 12-44.1 among the exceptions to possession of a firearm or dangerous weapon at a public gathering.

It is a class B misdemeanor under N.D.C.C. § 62.1-02-05 to knowingly possess a firearm or dangerous weapon at a public gathering. The statute defines a "public gathering" to mean an athletic or sporting event, a school, a church, and a publicly owned building. The statute then enumerates thirteen exceptions, including law enforcement, military, organized sport shooting competitors, gun and antique shows, use of blank cartridges at sporting or theatrical events, temporary residence or motor vehicle, students and instructors at hunter safety classes, on-duty private security personnel, in state or federal parks, educational, training, cultural, or competitive events involving the authorized use of a dangerous weapon; an individual in a publicly owned or operated rest area or restroom; concealed weapons license holders in a church or place of worship if approved and authorized by the primary religious leader or the governing body, and municipal and district court judges, attorney general staff, and retired law enforcement, provided they meet the same firearms proficiency required by the Peace Officer Standards and Training Board for law enforcement officers.

The ND DOCR's Penitentiary and its affiliated facilities, the James River Correctional Center and the Missouri River Correctional Center, are public buildings under Section 62.1-02-05. The same is true for the county correctional facilities and regional corrections centers under N.D.C.C. ch. 12-44.1.

The primary purpose of the amendment is to primarily address an amendment made to the definition of "dangerous weapon" in House Bill 1241 in the 64th Legislative Assembly. Up until the adoption of the amendment, weapons that delivered voltage were not included in the definition of dangerous weapon. The amendment to the definition of "dangerous weapon" at N.D.C.C. § 62.1-01-01(1) included the following language: "However, the term includes a

device that uses a projectile and may be used to apply multiple applications of voltage during a single incident.”

What had been a lawful weapon for state and local correctional officers became an unlawful dangerous weapon they could no longer use. The proposed amendment restores the authority to possess and use such weapons.

It is not the intent of the amendment to alter restrictions applicable to correctional officers on the possession and use of firearms, and the amendment does not make such an alteration. The firearms prohibitions under Section 62.1-02-05 that would otherwise affect correctional officers employed by ND DOCR or by chapter 12-44.1 correctional facilities are directly addressed by statutes specific to the ND DOCR and to chapter 12-44.1 correctional facilities.

Subsection 2 of Section 12-47-34 of the North Dakota Century Code grants the Director of the ND DOCR the authority to authorize correctional officers to carry firearms in the course of their duties. That authority is set out as follows:

12-47-34. Escapes from director's custody - Director may offer reward for recapture - Payment of reward - Use of firearms.

2. The director may authorize correctional officers trained in the use of firearms:
 - a. To carry firearms when in the course of their duties on penitentiary premises
 - b. To carry firearms, including keeping and carrying loaded firearms in motor vehicles, when transporting offenders in the custody of the department.
 - c. To carry firearms, including keeping and carrying loaded firearms in motor vehicles, for the prevention of escapes or for the apprehension of offenders who have escaped from the custody of the department.

Subsection 3 of Section 12-47-34 states “[s]ections 62.1-02-05, 62.1-02-10, and 62.1-03-01 do not apply to the possession and use of firearms by authorized and trained correctional officers acting in the course of their employment under this section.”

County correctional officers have more limited authority to carry weapons, including firearms. The applicable statute is set out here:

12-44.1-30. Correctional officers authorized to carry weapons.

The administrator of a correctional facility may allow a qualified correctional officer to carry a weapon, including a firearm, during the transport of another governmental agency's prisoner if the correctional facility has a contract with the governmental agency to transport the agency's prisoners and that contract requires the officer doing the transport to be armed with a weapon. For purposes of this section, "governmental agency" means an agency or department of this state or of any political subdivision in this state, or another state or of a political subdivision of another state, or of the United States. The administrator of a correctional facility shall adopt a policy, approved by the director of the department of corrections and rehabilitation, which establishes the qualifications and training an officer must meet to carry a weapon under this section. Sections 62.1-02-05, 62.1-02-10, and 62.1-03-01 do not apply to the possession and use of a firearm by a qualified correctional officer acting in the course of employment as allowed by this section.

It is not the intent of the amendment to alter restrictions on firearms, and the amendment does not make such an alteration. The firearms prohibitions under Section 62.1-02-05 that would otherwise affect correctional officers employed by ND DOCR or by chapter 12-44.1 correctional facilities are directly addressed by statutes specific to the ND DOCR and to chapter 12-44.1 correctional facilities. The proposed amendments to Section 62.1-02-05 do not alter the firearms requirements and limitations applicable to ND DOCR correctional facilities under subsection 2 of section 12-47-34 and to correctional facilities subject to chapter 12-44.1 under section 12-44.1-30. State correctional officers must be "acting in the course of their employment under this section" and local correctional officers must be acting in the course of employment *as allowed by this section.* " (emphasis added).

The proposed amendments to Section 62.1-02-05 do not alter the firearms requirements and limitations applicable to ND DOCR correctional facilities under subsection 2 of section 12-47-34 and to correctional facilities subject to chapter 12-44.1 under section 12-44.1-30. State correctional officers must be "acting in the course of their employment under this section" and local correctional officers must be acting in the course of employment *as allowed by this section.* " (emphasis added).

Therefore, the ND DOCR respectfully requests favorable consideration and passage of Senate Bill 2125.

SB 2125
1/10/17

①

17.8096.01000
Sixty-fifth
Legislative Assembly
of North Dakota
Introduced by
Judiciary Committee

(At the request of the Department of Corrections and Rehabilitation)
A BILL for an Act to amend and reenact section 62.1-02-05 of the North Dakota Century Code, relating to possession of a firearm or dangerous weapon.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 62.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

62.1-02-05. Possession of a firearm or dangerous weapon at a public gathering - Penalty - Application.

1. An individual who knowingly possesses a firearm or dangerous weapon at a public gathering is guilty of a class B misdemeanor. For the purpose of this section, "public gathering" means an athletic or sporting event, a school, a church, and a publicly owned or operated building.
2. This section does not apply to:
 - a. A law enforcement officer or a correctional officer employed by the department of corrections and rehabilitation or by a correctional facility governed by chapter 12 - 44.1. A correctional officer employed by the department of corrections and rehabilitation may only carry a firearm as authorized in section 12-47-34. A correctional officer employed by a correctional facility governed by chapter 12-44.1 may only carry a firearm as authorized in section 12-44.1-30;
 - b. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations, when on duty;
 - c. A competitor participating in an organized sport shooting event;
 - d. A gun or antique show;
 - e. A participant using a blank cartridge firearm at a sporting or theatrical event;
 - f. A firearm or dangerous weapon carried in a temporary residence or motor vehicle;
 - g. A student and an instructor at a hunter safety class;
 - h. Private security personnel while on duty;

Page No. 1 17.8096.01000

SENATE BILL NO. 2125

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13

SB 2125
1/10/17

14
15
16
17
18
19
20
21
22
23
24

Sixty-fifth

Legislative Assembly

i. A state or federal park;

j. An instructor, a test administrator, an official, or a participant in educational, training, cultural, or competitive events involving the authorized use of a dangerous weapon if the event occurs with permission of the person or entity with authority over the function or premises in question;

k. An individual in a publicly owned or operated rest area or restroom;

l. An individual possessing a valid concealed weapons license from this state or who has reciprocity under section 62.1-04-03.1 authorizing the individual to carry a dangerous weapon concealed if the individual is in a church building or other place of worship and has the approval to carry in the church building or other place of worship by a primary religious leader of the church or other place of worship or the governing body of the church or other place of worship. If a church or other place of worship authorizes an individual to carry a concealed weapon, local law enforcement must be informed of the name of the authorized individual; and

m. A municipal court judge, a district court judge, a staff member of the office of attorney general, and a retired North Dakota law enforcement officer, if the individual maintains the same level of firearms proficiency as is required by the peace officer standards and training board for law enforcement officers. A local law enforcement agency shall issue a certificate of compliance under this section to an individual who is proficient.

3. This section does not prevent any political subdivision from enacting an ordinance that is less restrictive than this section relating to the possession of firearms or dangerous weapons at a public gathering. An enacted ordinance supersedes this section within the jurisdiction of the political subdivision.

Page No. 2 17.8096.01000

1
2
3
4
5
6
7
8
9
10

SB 2125
1/10/17

PROPOSED AMENDMENT TO SENATE BILL NO. 2125

Page 1, line 15, after "12-44.1" insert ". A correctional officer employed by the department of corrections and rehabilitation may only carry a firearm as authorized in section 12-47-34. A correctional officer employed by a correctional facility governed by chapter 12-44.1 may only carry a firearm as authorized in section 12-44.1-30"

#1
2125
3-7-17

**ENGROSSED SENATE BILL 2125
HOUSE JUDICIARY COMMITTEE
March 7, 2017**

TO: Kim Koppelman, Chairman, House Judiciary Committee, and Members of the House Judiciary Committee.

Ken Sorenson, Special Assistant Attorney General, submits this written testimony in support of Engrossed Senate Bill 2125 on behalf of the North Dakota Department of Corrections and Rehabilitation ("ND DOCR").

Engrossed Senate Bill 2125 was submitted at the request of the ND DOCR to amend N.D.C.C. § 62.1-02-05 to include correctional officers employed by the ND DOCR and by county correctional facilities and regional corrections centers governed by N.D.C.C. chapter 12-44.1 among the exceptions to possession of a firearm or dangerous weapon at a public gathering.

It is a class B misdemeanor under N.D.C.C. § 62.1-02-05 to knowingly possess a firearm or dangerous weapon at a public gathering. The statute in its present form defines a "public gathering" to mean an athletic or sporting event, a school, a church, and a publicly owned or operated building.¹ The statute then enumerates multiple exceptions to the prohibition in subsection 1 of section 62.1-02-05. The exceptions include law enforcement, military, organized sport shooting competitors, gun and antique shows, use of blank cartridges at sporting or theatrical events, temporary residence or motor vehicle, students and instructors at hunter safety classes, on-duty private security personnel, in state or federal parks, educational, training, cultural, or competitive events involving the authorized use of a dangerous weapon; an individual in a publicly owned or operated rest area or restroom; concealed weapons license holders in a church or place of worship if approved and authorized by the primary religious leader or the governing body, and municipal and district court judges, attorney general staff, and retired law enforcement, provided they meet the same firearms proficiency required by the Peace Officer Standards and Training Board for law enforcement officers.²

The ND DOCR's Penitentiary and its affiliated facilities, the James River Correctional Center and the Missouri River Correctional Center, are publicly owned buildings. The same is true for the county correctional facilities and regional corrections centers.

¹ House Bill 1278 amends the definition of "Government building" in subsection 5 of section 62.1-01-01 to mean a building or part of a building that only allows access by going through security equipment and is staffed by armed security personnel. HS 1278 also amends the definition of a "public gathering" by replacing a "publicly owned or operated" building with a "government" building.

² Other bills that amend Section 62.1-02-05 include House Bill 1190, Engrossed House Bill 1273, and Engrossed House Bill No. 1395 (emergency measure)

The primary purpose of Engrossed Senate Bill 2125 is to address an amendment made to the definition of “dangerous weapon” in House Bill 1241 in the 64th Legislative Assembly. Up until the adoption of the amendment, weapons that delivered multiple applications of voltage with a projectile during a single incident were not included in the definition of dangerous weapon. The amendment to the definition of “dangerous weapon” at N.D.C.C. § 62.1-01-01(1) included the following language: “However, the term includes a device that uses a projectile and may be used to apply multiple applications of voltage during a single incident.”³

What had been a lawful weapon for state and local correctional officers to carry until August 1, 2015 became an unlawful dangerous weapon they could no longer use. Engrossed Senate Bill 2125 restores the authority to possess and use such weapons in public buildings that comprise a state correctional facility, county correctional facility, and regional corrections facility. .

There already is limited authority for correctional officers to use firearms in the course of their duties.

Subsection 2 of Section 12-47-34 of the North Dakota Century Code grants the Director of the ND DOCR the authority to authorize correctional officers to carry firearms in the course of their duties. That authority is set out as follows:

12-47-34. Escapes from director's custody - Director may offer reward for recapture - Payment of reward - Use of firearms.

2. The director may authorize correctional officers trained in the use of firearms:
 - a. To carry firearms when in the course of their duties on penitentiary premises
 - b. To carry firearms, including keeping and carrying loaded firearms in motor vehicles, when transporting offenders in the custody of the department.
 - c. To carry firearms, including keeping and carrying loaded firearms in motor vehicles, for the prevention of escapes or for the apprehension of offenders who have escaped from the custody of the department.

Subsection 3 of Section 12-47-34 states “[s]ections 62.1-02-05, 62.1-02-10, and 62.1-03-01 do not apply to the possession and use of firearms by authorized and trained correctional officers acting in the course of their employment under this section.”

³ Engrossed House Bill 1395 amends the definition of “dangerous weapon” in section 62.1-01-01 . Under the amended definition, a “device that uses a projectile and may be used to apply multiple applications of voltage during a single incident” remains a dangerous weapon for an individual prohibited from possessing a firearm under Title 62.1.

County correctional officers have more limited authority to carry weapons, including firearms. The applicable statute is set out here:

12-44.1-30. Correctional officers authorized to carry weapons.

The administrator of a correctional facility may allow a qualified correctional officer to carry a weapon, including a firearm, during the transport of another governmental agency's prisoner if the correctional facility has a contract with the governmental agency to transport the agency's prisoners and that contract requires the officer doing the transport to be armed with a weapon. For purposes of this section, "governmental agency" means an agency or department of this state or of any political subdivision in this state, or another state or of a political subdivision of another state, or of the United States. The administrator of a correctional facility shall adopt a policy, approved by the director of the department of corrections and rehabilitation, which establishes the qualifications and training an officer must meet to carry a weapon under this section. Sections 62.1-02-05, 62.1-02-10, and 62.1-03-01 do not apply to the possession and use of a firearm by a qualified correctional officer acting in the course of employment as allowed by this section.

It is not the intent with Engrossed Senate Bill 2125 to expand the authorized use of firearms for correctional officers for the ND DOCR and for correctional facilities subject to N.D.C.C. ch. 12-44.1 beyond their current statutory authority. The amendment added to Senate Bill 2125 by the Senate Judiciary Committee specifies a correctional officer's authority to carry a firearm is only as allowed under section 12-44.1-30 or section 12-47-34, statutes specific to the ND DOCR and chapter 12-44.1 correctional facilities. State correctional officers must be "acting in the course of their employment under [section 12-47-34]" and local correctional officers must be acting in the course of employment as allowed by [section 12-44.1-34]".

Therefore, the ND DOCR respectfully requests favorable consideration and passage of Engrossed Senate Bill 2125.