

**2023 SENATE JUDICIARY**

**SB 2385**

# 2023 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Peace Garden Room, State Capitol

SB 2385  
2/6/2023

A bill relating to prohibiting a political subdivision from seizing personal property without due process; relating to theft of property; and to provide a penalty.
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2:35 PM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson and Braunberger are present.

## **Discussion Topics:**

- Confiscated items
- Searches
- Missing property

2:35 PM Senator Wobbema introduced the bill and provided written testimony #19262.

2:38 PM John Ertelt spoke in favor of the bill. #19346

2:41 PM Tom Iverson Chief of Operations, North Dakota Highway Patrol, testified in favor of the bill and provided written testimony. #19301

2:44 PM Sargent Matt Keesler testified opposed to the bill and provided written testimony. #19263

2:46 PM Tom Erhardt, Director, North Dakota Parole and Probation Division testified opposed to the bill and provided written testimony. #19185, #19369

2:53 PM Scott Winkelman, Chief Game Warden, North Dakota Game and Fish Department testified opposed to the bill and provided written testimony. #19296

2:56 PM Jonathan Beyers, North Dakota States Attorney's Association, spoke opposed to the bill.

3:09 PM Aaron Birst, Association of Counties, verbally testified opposed to the bill.

3:13 PM Stephanie Engebretson, Association of Sheriff's and Deputies, spoke opposed to the bill.

3:14 PM Blair Thorson, North Dakota Peace Officers Association, verbally testified.

3:15 PM Chairman Larson closed the public hearing.

**Additional written testimony:**

Beau Cummings provided written testimony #19256.

Rozanna Larson provided written testimony #19251.

Andrew Eyre provided written testimony #19187.

Tonya Jahner provided written testimony #19104.

Ty Skarda provided written testimony #19309.

Robert Drake provided written testimony #19302.

3:15 PM Chairman Larson closed the meeting.

*Rick Schuchard, Committee Clerk*

# 2023 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Peace Garden Room, State Capitol

SB 2385  
2/6/2023

A bill relating to prohibiting a political subdivision from seizing personal property without due process; relating to theft of property; and to provide a penalty.
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3:29 PM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson and Braunberger.

### **Discussion Topics:**

- Committee action

3:29 PM Senator Sickler moved Do Not Pass the bill. Seconded by Senator Braunberger.

3:29 PM Roll call vote was taken.

<b>Senators</b>	<b>Vote</b>
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 7-0-0.

Senator Estenson will carry the bill.

This bill does not affect workforce development.

3:37 PM Chairman Larson closed the meeting.

*Rick Schuchard, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2385: Judiciary Committee (Sen. Larson, Chairman)** recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2385 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

**TESTIMONY**

**SB 2385**

Testimony  
Attn: Senate Judiciary Committee  
Tonya Jahner  
February 3, 2023

RE: Senate Bill #2385

Committee Chair & Members of the Committee,

My name is Tonya Jahner. I am a Cass County resident and I am employed by the Cass County Sheriff's Office. I have approximately 15 years of Law Enforcement experience and currently serve as the Sergeant of Investigations at the Sheriff's Office.

I went into the Law Enforcement Profession as I wanted to serve my community. As part of my service to our citizens I have investigated and responded to many different types of calls. Whether it is a Homicide, Sexual Assault, Theft, Domestic Violence, Crimes Against Children, Narcotics (drugs) or Burglary they all seem to involve property. From my experience these crimes are committed on both private and public properties. Victims, suspects, and witnesses can be located at both private and public properties.

When property is seized as part of a case it has to be seized legally. This means the Officer must have been legal where they stood when the property was collected. This could mean the Officer received consent, they obtained a search warrant, or the property was in plain view where the Officer was. Once the property is seized and collected as evidence, a property receipt should be issued. The case will then move on to Criminal Court. If the State is going to request the property be forfeited there will also be a Civil Court hearing. Both the Criminal Court and Civil Court allow for the defendant to have Due Process, as outlined in the Constitution. If an Officer did not seize the property legally there are legal remedies through the court process. One example of this includes having the evidence thrown out in court as "Fruit of the Poisonous Tree." Officers have a very real interest in not violating an individual's rights because that is what we are sworn to protect. Additionally, Officers want to do things procedurally correct so the evidence can be used.

Senate Bill 2385 would greatly hamper our ability to investigate crimes and serve our citizens. Based on how the bill is written it does not appear a Search Warrant would be enough to seize the property (evidence) according to the definition of Due Process. Due Process is where the Defendant would have notice, an opportunity to be heard, and a decision by a neutral decision maker. In a Search Warrant application, a Defendant does not have prior notice the warrant is being issued and they do not have an opportunity to be heard prior to the warrant being issued. However, all of this would come into play through our current procedures in the Criminal and Civil Court processes.

If Senate Bill 2385 went into effect I believe many crimes may not be solved if a hearing has to be held prior to seizing evidence. It is my belief that many suspects/criminals may try to get rid of the property (evidence) prior to any hearing.

In conclusion, I believe Senate Bill 2385 would be doing the citizens of North Dakota a great disservice and would essentially allow for more criminal activity to continue. I urge you to vote "NO" on Senate Bill 2385.

Respectfully,



Tonya Jahner

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

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

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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.

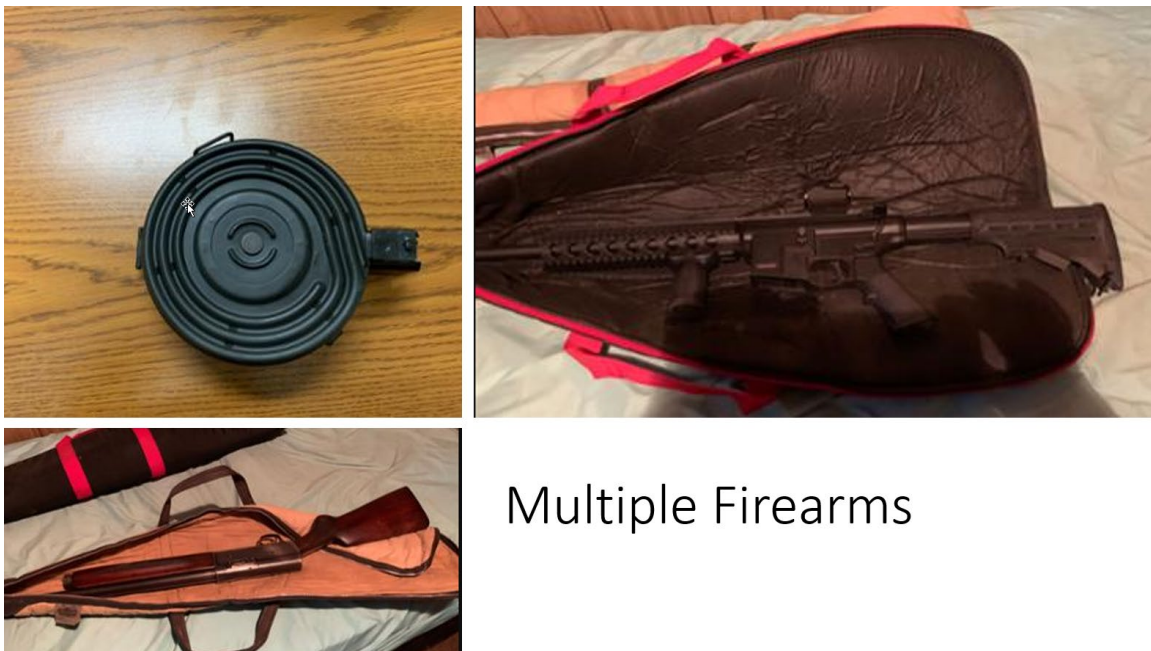
Depending on how the statute is interpreted, we are also concerned about how it may be applicable to individuals in correctional facilities, as there is no exception for them. The Department of Corrections and Rehabilitation provides the required due process to seize property and contraband during intake 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.

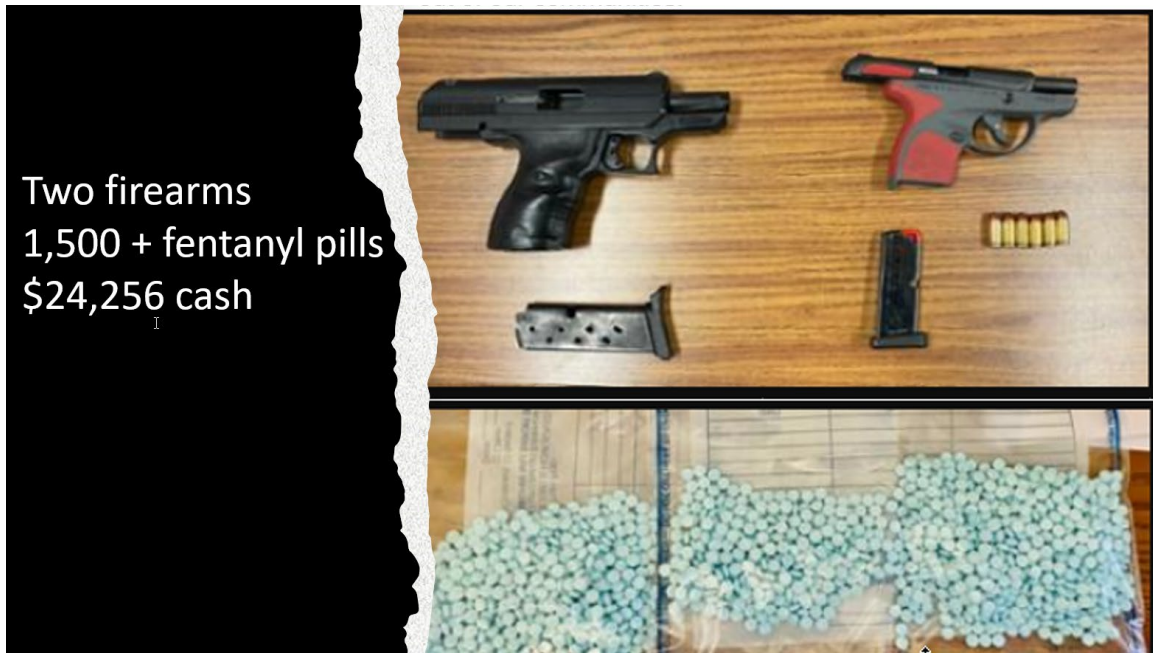


Figure 1 AR-10 rifle, body armor, loaded magazines found by a parole officer



## 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*

Dear Members of the Senate Judiciary Committee,

I write today to ask you to issue a DO NOT PASS recommendation for Senate Bill 2385. I am an Assistant State's Attorney in Grand Forks County. I write to you not as a representative of my office, but as a person with experience in this area who has concerns about the negative policy implications of this bill.

Senate Bill 2385 would greatly hinder law enforcement's ability to seize evidence of criminal activity.

This bill is overbroad and does not serve the interests of justice. Further, there are already remedies available for individuals to get their property back if it is improperly seized. Under Rule 41(e) of the North Dakota Rules of Criminal Procedure, "a person aggrieved by an unlawful search and seizure of property or evidence or by the deprivation of property may move the trial court for the return of the property or evidence."

Senate Bill 2385 would turn law enforcement officers doing their jobs by collecting evidence into thieves.

Officers on the street do not have the ability to provide suspects with due process of law before collecting evidence. Due process ordinarily means "notice and an opportunity to be heard" before a court or magistrate. Magistrates are not riding in squad cars, and I doubt our district court judges/magistrates wish to be contacted every time an officer wishes to collect evidence.

I ask you to issue a DO NOT PASS recommendation on SB 2385.

Very respectfully,

A handwritten signature in blue ink, appearing to be 'Andrew Eyre', with a long horizontal line extending to the right.

Andrew Eyre  
Assistant State's Attorney  
Grand Forks County

RE: SB 2385

TO: Chairman Larson and Senators of the Judiciary,

FROM: Rozanna Larson, Ward County State's Attorney

This is to express my opposition to SB 2385. The bill will devastate law enforcement and the ability to seize evidence of crimes and contraband. Search and seizure by law enforcement is already extensively governed by the constitution, State law, case precedent and Rules of Criminal Procedure. Requiring due process prior to the seizure will give the defendants the opportunity to remove or destroy contraband, such as, but not limited to: illegal drugs, child pornography, and evidence to support the sale of contraband. There are already a plethora of statutes addressing the Search and Seizure of property from suspects/defendants. NDCC 29-29.1-29.1-06 for criminal law; ND R.Crim.P. Rule 41.

Seizure of property by law enforcement also includes asset forfeiture, fruits of the crime. Last session legislature extensively revamped the asset forfeiture procedures providing protection for innocent owners and adding protections against over-zealous "seizures for profit." See NDCC 19-03.1-36 through 19-03.1-38

Other areas of law that allow for search and seizure are within the administrative code and procedures, game and fish statutes, jail and regional policies and administration, and food and drug, just to name a few. (See index of NDCC "Search and Seizure").

My other concern with this bill is the effect it will have on the political subdivisions' ability to exercise their eminent domain powers and its ability to exercise its right to tax foreclosure. These provisions are provided for by State law. Persons affected by eminent domain and tax foreclosure are provided the opportunity to due process after the political entity has exercised its authority and provided notice. See NDCC 32-15-01 to 32-15-35

Tax foreclosure includes both real and personal property. Mobile homes are considered personal property. Tax foreclosure occurs after there has been three years of delinquent taxes. The owner is provided notice and has the opportunity to redeem. See NDCC 32-31-01 to 32-31-07.



Chairwoman Larson, Vice Chairman Paulson, and other honorable members of the Senate Judiciary Committee:

I write today in **OPPOSITION TO** Senate Bill 2385. From my perspective the main thrust of the bill is an attempt to criminalize the collection of evidence by law enforcement. The bill is overly broad and does not consider the realities of criminal investigations including the collection and retention of physical evidence and the confiscation and seizure of contraband such as drugs and paraphernalia. Before voting on this bill I urge you to contact your local Sheriff and State's Attorney and ask for their thoughts.

Additionally, I believe the bill adds an unnecessary section to the Century Code as the law already provides for theft of property whether committed by an individual or an organization. There is no need to specifically address public servants unless this bill was specifically drafted to be anti-law enforcement. Further, the bill does not define "private property" or "due process of law" which creates ambiguity and opens officers who were acting lawfully according to their duties to criminal charges.

I urge you all to vote **DO NOT PASS**. If you wish to discuss SB 2385 further with me or if you have any additional questions, I can be contacted at the below-listed information.

Very Respectfully,

*/s/B. Cummings #09099*

Beau M. Cummings, #09099  
Ramsey County State's Attorney  
524 4<sup>th</sup> Avenue NE  
Devils Lake, ND 58301  
701-662-7077  
[ramseysa@nd.gov](mailto:ramseysa@nd.gov)

**230206 SB 2385 – Seizing personal property without due process**

Senator Mike Wobbema, District 24

Madam Chair, Senate Judiciary Committee,

My name is Mike Wobbema, Senator from District 24, Barnes and Ransom Counties.

Proper Notice in the United States is defined as the right to receive notice before the government deprives an individual of a protected interest and is guaranteed, along with the opportunity to be heard, by the Due Process Clauses in the Fifth and Fourteenth Amendments of our Constitution. Further, **Notice** is the legal concept describing a requirement that a party be aware of any legal process affecting their rights, obligations or duties.

This Bill is brought to you on behalf of local constituents who have had their property taken from them without the Proper Notice being given. In one particular instance, the property owner involved was away for a couple of weeks at a family gathering out of state. Upon return, he found a notice stuck to his door, and before he could coordinate the necessary effort to address it, employees from the city arrived and took away the property in his front and back yard. It was only due to the awareness and compassion of one of the city employees, that some of that property necessary for conduct of the business of this property owner, that some of that property was spared.

This issue is not the situation that compelled the city to initiate action. This issue is that the only method they use in cases like this, is to notify a property owner by sticking a statement on their front door. If that property owner is away for any extended period of time, short or long, there is no reasonable assurance that they are aware of the issue. It should be necessary that proper notice be given, **and responded to**, before the city, or any other political sub-division take the action cited in my example above. By the way, the confiscated property was immediately disposed of, not permitting any opportunity to reclaim it.

Madam Chair, Judiciary Committee, I stand for any questions.

Respectfully,

Mike Wobbema, Senator, District 24





# STARK COUNTY SHERIFF'S OFFICE

66 WEST MUSEUM DRIVE | PO BOX 130 | DICKINSON, NORTH DAKOTA 58601-0130  
 TELEPHONE 701.456.7610 | FACSIMILE 701.456.7692

**SHERIFF COREY LEE**

2/5/23

Sgt. Matt Keesler  
 Stark County Sheriff's Office  
 Civil Process  
 66 W Museum Dr.  
 Dickinson, ND 58601

Testimony in Opposition to SB 2385

To the Chair and Members of the ND Senate Judiciary Committee:

I submit testimony in opposition to this bill as written.

ND statute requires the sheriff to enforce both post judgment and pre-judgment actions by way of Execution, Claim and Delivery (Replevin), Attachment, Distraint, Foreclosure of Liens on Personal Property and Eviction. All involve the potential seizure of personal property for purposes of satisfying either a judgment, or for the securing of assets and/or collateral prior to a judgment or hearing.

Due process has been applied in these actions by way of a court order. A judgment has been rendered based on both a preponderance of evidence, and whether rules of civil procedure, such as sufficient service on a defendant/respondent, had been followed. Sufficient service, as evidenced by a sheriff's return and/or affidavit of service, establishes personal jurisdiction over a party by the district and/or small claims court *See ND Rules of Civil Procedure, Rule 4(b)(4).*

While case law has established that the intention of a particular statute can be examined on review, the supreme court has also established the standard of plain language. This is especially true when no other meaning plainly appears to the contrary. NDCC 01-02-05 requires the wording of a statute to supersede the "spirit of the law," so to speak.

Provisions exist for the enforcement of civil judgments under law. When taking property, the sheriff shall deliver a copy of the Notice of Levy to both the Defendant, and to any other interested party who may be holding said property, such as a bank.

# STARK COUNTY SHERIFF'S OFFICE



66 WEST MUSEUM DRIVE | PO BOX 130 | DICKINSON, NORTH DAKOTA 58601-0130  
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**SHERIFF COREY LEE**

*Testimony in opposition to SB 2385 as written pg. 2*

The defendant is given the opportunity to submit claims for exemptions in opposition to the levy within ten (10) of service; the first "day" begins the day after service. If not contested by the plaintiff, any property seized is returned to the defendant. The same principals of due process apply to Attachment, Claim and Delivery, Distrain, etc.

As written, SB 2385 would appear to limit ND sheriffs from enforcing judgments rendered by either a district or small claims court. I would ask that exceptions be written into this bill reflective of the aforementioned examples.

I would like to thank the Senate Judiciary Committee for the opportunity to submit written and oral testimony.

Sincerely,

A handwritten signature in black ink, appearing to read "m. keesler".

Sgt. Matt Keesler  
Stark Co Sheriff's Office





Senate Judiciary Committee  
Testimony on SB 2385

North Dakota Game and Fish Department  
Scott Winkelman, Chief Game Warden  
February 6, 2023

Madam Chair Larson and members of the Senate Judiciary Committee, my name is Scott Winkelman, Chief Game Warden for the North Dakota Game and Fish Department. I am testifying today in opposition of SB 2385.

SB 2385 would add new language to North Dakota Century Code 12.1-23-02 stating that a person is guilty of theft if the person is 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 new language would essentially prohibit licensed law enforcement officers, including district game wardens, from seizing or confiscating personal property items that are used in the commission of a crime, abandoned, or evidence of a crime while a crime is occurring or being investigated. This would result in the loss of critical evidence and complicate prosecution of crimes in North Dakota.

The seizure and confiscation of property by law enforcement is currently covered in numerous areas of the North Dakota Century Code, including chapter 20.1-10. More specifically, 20.1-10-01 currently states what property shall be seized, what property may not be seized, and that all property seized must be held subject to the order of a court of competent jurisdiction and when property is confiscated, the confiscating officer shall bring the alleged offender before a court having nominal jurisdiction for the purpose of determining jurisdiction. Current laws allow officers to collect crucial evidence during the investigation of a crime while still providing due process for the property owner. Additionally, the new language included in this bill would call into question the authority of law enforcement officers to seize private property that a District Court Judge has issued a search warrant for after a determination of probable cause.

Therefore, the Department is asking the committee to send a recommendation of do not pass for SB 2385.



68<sup>th</sup> Legislative Assembly  
Testimony in **Opposition** of  
**Senate Bill No. 2385**  
Senate Judiciary Committee  
February 06, 2023

TESTIMONY OF

**Major Tom Iverson, Chief of Operations**

Good afternoon Chairwoman Larson and members of the committee. My name is Tom Iverson and I serve as the chief of operations for the North Dakota Highway Patrol. I am here to provide testimony in opposition of Senate Bill 2385.

This bill amends NDCC 12.1-23-02 relating to theft of property. The language within the bill seeks to define theft of property if a public servant or political subdivision seizes or confiscates private property before providing the owner with due process of law.

As a sworn law enforcement officer, I certainly appreciate the need to protect people's rights, especially the protection of life, liberty, and property. Those are constitutional rights afforded to all.

However, in the event one of our troopers makes a traffic stop on a vehicle and it is discovered the driver is trafficking illegal drugs across our state, the vehicle will be thoroughly searched for additional evidence. Additional items seized as evidence may include such things as smoking devices, scales, baggies, handguns, ledgers, cell phones, etc. Each of these items have a rightful owner, typically the driver or occupant of the vehicle. Law enforcement must be able to seize these items of evidence as they are all crucial to the prosecution of the case. Without said evidence being seized by law enforcement, there will be no prosecution, and these items will be right back on the streets.

This bill makes it nearly impossible for law enforcement to seize evidence of a crime, as most all evidence of a crime may be considered personal property. The owner of the items seized as evidence will in fact be provided due process of law, but the necessary evidence must be seized first in order to provide that due process.

This concludes my testimony. I am happy to answer any questions you may have.

My name is Robert Drake and this is my testimony concerning what happened to my property. We owned a restaurant in Casselton, North Dakota. My grandsons car broke down in Fargo so we towed it to Casselton with the intention of having it fixed locally. The vehicle was parked behind our restaurant and behind a fence. The vehicle was there for a few months until repairs could be arranged. My wife's mother had terminal cancer at that time and was in hospice care and needed all of the family to take shifts so she always had a family member with her. The car issue was low on the list of things to. We never received any notice to remove the car . We found out that the car had been towed by the towing company calling us demanding almost one thousand dollars for towing charges and nearly two months storage fees. The towing company had to remove a fence, go on to private property in order to tow the car. The cost to repair my grandsons car was about \$2000.00 and with the additional towing and storage costs he lost his car. The car was on commercial property behind a fence and the city of Cassleton towed it anyway, you could not even see this car from the street you had to drive threw the alley look threw a fence to even see the car. Everyone understands that communities have the right to make sure their town looks clean and without abandon vehicles all over the town. But what Casselton and many other cities are doing is illegal, every citizen deserves his day in court. Every citizen has the right of due process. I go threw this every year in Valley City I have 7 children and 3 grand children all who drive and have several vehicles, so it is always an issue for us. People with money can rent storage, they can put up their own buildings and because they have money they are not effected by these discriminatory laws. SB 2385 in my opinion will give the citizen the right to due process so both sides have an opportunity to be heard. I request a, do pass on SB 2385

Sincerely

Robert Drake

Dear Members of the Senate Judiciary Committee,

I write today to ask you to issue a DO NOT PASS recommendation for Senate Bill 2385. This bill will severely hinder any law enforcement agency's ability to seize illegal contraband and collect evidence from crimes they are investigating. Furthermore, it will have a chilling effect on law enforcement's willingness to investigate crimes where they potentially may need to seize illegal contraband. This would include cases involving drug trafficking, child pornography, and violent crimes where firearms or other weapons were used.

There are already several safeguards in place that prevent government from seizing personal property illegally, including the U.S. Constitution, ND State law, and the rules of Criminal Procedure. Due process typically requires notice and the opportunity to appear before a court or judge. The bill does not consider what goes into a criminal investigation and the resources it would take for an individual to be provided due process prior to law enforcement seizing any contraband or evidence from an investigation. These are resources that simply do not exist. The bill also fails to consider how this will give defendants the opportunity to destroy or dispose of incriminating evidence while preventing law enforcement from conducting a thorough investigation.

For the reasons listed above I respectfully ask you all to vote DO NOT PASS on Senate Bill 2385. If you wish to discuss this further or have any additional questions please do not hesitate to contact me.

Respectfully,



Ty L. Skarda  
McKenzie County State's Attorney  
201 5<sup>th</sup> Street NW, Suite 550  
Watford City, ND 58854  
Telephone: 701-444-3733  
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e-serve: [mcsa@co.mckenzie.nd.us](mailto:mcsa@co.mckenzie.nd.us)

2/2/23, 5:46 PM

black's law - definition of due process of law definition - Google Search

What are the 3 requirements of due process?

Making room for these innovations, the Court has determined that due process requires, at a minimum: **(1) notice; (2) an opportunity to be heard; and (3) an impartial tribunal.**



## **Due process of law.**

Law in its regular course of administration through courts of justice. Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. A course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution- that is, by the law of its creation-to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance. *Pennoyer v. Neff* 95 U.S. 733, 24 L.Ed. 565.

Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law.

An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case. *Kazubowski v. Kazubowski*, 45 DJ.2d 405, 259 N.E.2d 282. 290.

Phrase means that no person shall be deprived of life, liberty, property or of any right granted him by statute, unless matter involved first shall have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings, and it forbids condemnation without a hearing. *Pettit v. Penn*, La.App., 180 So.2d 66, 69.

The concept of "due process of law" as it is embodied in Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a reasonable and substantial relation to the object being sought. *U. S. v. Smith*, D.C.Iowa, 249 F.Supp. 515. 516.

Fundamental requisite of "due process" is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest, and to assert before the appropriate decision-making body the reasons for such choice. *Trinity Episcopal Corp. v. Romney*, D.C.N.Y., 387 F.Supp. 1044, 1084.



Aside from all else, "due process" means fundamental fairness and substantial justice. *Vaughn v. State*, 3 Tenn.Crim.App. 54, 456 S.W.2d 879, 883.

Embodied in the due process concept are the basic rights of a defendant in criminal proceedings and the requisites for a fair trial. These rights and requirements have been expanded by Supreme Court decisions and include, timely notice of a hearing or trial which informs the accused of the charges against him or her the opportunity to confront accusers and to present evidence on one's own behalf before an impartial jury or judge; the presumption of innocence under which guilt must be proven by legally obtained evidence and the verdict must be supported by the evidence presented; the right of an accused to be warned of constitutional rights at the earliest stage of the criminal process; protection against self-incrimination; assistance of counsel at every critical stage of the criminal process; and the guarantee that an individual will not be tried more than once for the same offense (double jeopardy).

*See also* Procedural due process; Substantive due process. Due process rights. All rights which are of such fundamental importance as to require compliance with due process standards of fairness and justice. Procedural and substantive rights of citizens against government actions that threaten the denial of life, liberty, or property.

*See* Due process of law.

**The Requirements of Due Process.**—Although due process tolerates variances in procedure “appropriate to the nature of the case,”<sup>751</sup> it is nonetheless possible to identify its core goals and requirements. First, “[p]rocedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property.”<sup>752</sup> Thus, the required elements of due process are those that “minimize substantively unfair or mistaken deprivations” by enabling<sup>753</sup> persons to contest the basis upon which a state proposes to deprive them of protected interests. The core of these requirements is notice and a hearing before an impartial tribunal. Due process may also require an opportunity for confrontation and cross-examination, and for discovery; that a decision be made based on the record, and that a party be allowed to be represented by counsel.

(1) Notice. “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”<sup>754</sup> This may include an obligation, upon learning that an attempt at notice has failed, to take “reasonable followup measures” that may be available.<sup>755</sup> In addition, notice must be sufficient to enable the recipient to determine what is being proposed and what he must do to prevent the deprivation of his interest.<sup>756</sup> Ordinarily, service of the notice must be reasonably structured to assure that the person to whom it is directed receives it.<sup>757</sup> Such notice, however, need not describe the legal procedures necessary to protect one’s interest if such procedures are otherwise set out in published, generally available public sources.<sup>758</sup>

(2) Hearing. “[S]ome form of hearing is required before an individual is finally deprived of a property [or liberty] interest.”<sup>759</sup> This right is a “basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment . . . .”<sup>760</sup> Thus, the notice of hearing and the opportunity to be heard “must be granted at a meaningful time and in a meaningful manner.”<sup>761</sup>

(3) Impartial Tribunal. Just as in criminal and quasi-criminal cases,<sup>762</sup> an impartial decisionmaker is an essential right in civil proceedings as well.<sup>763</sup> “The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. . . . At the same time, it preserves both the appearance and reality of fairness . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.”

Section 12-02-08. - Removal by police department.

The Police Department may remove or cause to be removed any trash, rubbish, junk, building materials, junk automobiles, abandoned vehicles or parts of junk or abandoned vehicles, or discontinued business identification, from any private property after having notified in writing the owner or occupant of such property of its intention to do so at least 48 hours prior to the removal. The notice will be served personally upon the owner or occupant of the property if occupied, or may be posted in a conspicuous place upon vacant or unoccupied property. The removal must occur within not less than 48 hours nor more than 30 days after the service or posting of the notice. Any trash, rubbish, junk, building materials, junk automobiles, abandoned vehicles or parts of junk or abandoned vehicles, or discontinued business identification, will be removed and disposed of in accordance with the law. The removal by the Police Department does not excuse or relieve any person of the obligations imposed by this ordinance.

(Ord. No. 1025, § 1, 10-17-2017)

Section 12-02-09. - Property maintenance—Penalty.

Any violation of chapter 12-2, property maintenance, for which another penalty is not provided is a class B misdemeanor and must include a fine of \$300.00. Each day a violation of this chapter occurs may be treated as a separate offense.

(Ord. No. 1025, § 1, 10-17-2017; Ord. No. 1084, § 2, 6-15-2021)

Section 12-02-10. - Assessment of cost.

Whenever an owner or occupant of property has failed to comply with the notice and requirement to remove or cause to be removed any items referred to in this title, and the city by its police department or other departments has removed those items, the owner or occupant of the property will be billed for the cost of removal by the municipality. If the payment is not made when due, it may be assessed against the premises on which the work was done, collected and returned in the same manner as other municipal taxes are assessed, certified, collected, and returned, in accordance with N.D.C.C. § 45-05-01.1. The city reserves the right to seek a civil judgment against the owner or occupant for such costs.

(Ord. No. 1025, § 1, 10-17-2017)

<p style="text-align: center;">NORTH <b>Dakota</b> Be Legendary.™</p> <p style="text-align: center;">Corrections and Rehabilitation</p> <p style="text-align: center;"><b>POLICY &amp; PROCEDURES</b></p>	<p><b>POLICY NUMBER AND SECURITY:</b> 3A-12 – This policy has no confidential or exempt information.</p>	
	<p><b>RELATED STANDARDS (such as ACA/ACI/ACRS/PbS/PREA):</b> ACA 4-APPFS-3B-11</p>	
<p><b>RELATED REFERENCES:</b></p> <p>Appendices:  <ul style="list-style-type: none"> <li>• Evidence Inventory and Receipt 1999 (Appendices Folder on the Intranet – Section 3A)</li> </ul> </p> <p>Manuals: None</p> <p>Related DOCR Training: New Officer Training</p>		
<p><b>DIVISION:</b> Division of Adult Services</p>	<p><b>FACILITY/WORK GROUP:</b> Parole &amp; Probation</p>	<p><b>TOPIC:</b> Preservation of Physical Evidence</p>

<p>Effective Date: August 15, 2011</p> <p>Revised: October 2, 2011</p> <p>Revised: February 14, 2014</p> <p>Revised: September 16, 2014</p> <p>Reviewed: March 4, 2015</p> <p>Reviewed: March 31, 2016</p>	<p>Reviewed: June 27, 2017</p> <p>Revised: August 18, 2017</p> <p>Revised: July 24, 2018</p> <p>Revised: June 17, 2018</p> <p>Revised: July 11, 2019</p> <p>Revised: June 29, 2022</p>
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**Summary of Revision(s)**

<p><i>Revisions made by Pat Bohn and reviewed by the rest of the Administrative Policies Committee.</i></p> <ol style="list-style-type: none"> <li>1. This policy has no confidential or exempt information.</li> <li>2. Appendix: Evidence Inventory and Receipt 1999/</li> <li>3. No manuals.</li> <li>4. Related DOCR Training: New Officer Training.</li> <li>5. Added language relating to recording evidence seizure and disposal/return in the Docstars Search Module.</li> <li>6. Grammar and style changes throughout.</li> </ol>
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1. **AUTHORITY:** The authority for this policy with procedures is found in chapter 54-23.3 of the North Dakota Century Code.
2. **APPLICABILITY:** This policy with procedures is applicable to staff working for the Parole and Probation Division.
3. **DEFINITIONS**
  - A. Controlled Substances: Any drug regulated by the Drug Enforcement Act.
  - B. Evidence: Various items presented to a court, jury, preliminary hearing officer or parole board for the purpose of proving or disproving a question under inquiry which may include testimony, records, objects, documents, photographs, maps and electronic storage devices.
  - C. Inventory Control Officer: Employee appointed to be in charge of the evidence vault.
4. **POLICY:** The Department's Parole and Probation Division shall have written procedures for obtaining and preserving physical evidence. At a minimum, these procedures must include chain of custody, evidence handling and location, and storage requirements. **(4-APPFS-3B-11)**
5. **PROCEDURES:**
  - A. Officers shall record and label evidence as follows:
    1. Subject's name and state identification number, if applicable.
    2. Date, time, and location where evidence was confiscated.
    3. Name of officer who located the evidence.
    4. Description of the evidence with serial number, if applicable.
  - B. Officers shall provide a written report that includes information outlined in Subsection 5(A) above and any other pertinent details of how the evidence was obtained. All documentation relating to evidence, including the Evidence Inventory and Receipt form, must be attached to the written report.
  - C. The original Evidence Inventory and Receipt form must stay with the confiscated property. A copy must be given to the person the evidence was confiscated from or left at the premises where the evidence was confiscated if the owner is not there at the time of the search.
  - D. All evidence must be secured in a locked storage compartment or storage area.
  - E. Suspected controlled substances or paraphernalia requiring further analysis, as determined by the case officer, must be delivered to the State Toxicologist or the State Laboratory in a timely manner.
  - F. Evidence seized must also be recorded in Docstars using the Search Module.

- G. Evidence must be stored or disposed of in the following manner:
1. The regional Program Manager shall designate an inventory control officer to manage the evidence vault. The inventory control officer shall have exclusive access to the evidence locker. The inventory control officer shall maintain an inventory control log that includes access control, receipt control and chain of custody.
  2. An inventory of evidence must be conducted by the inventory control officer, at least annually and report submitted to the regional Program Manager.
  3. Final disposition of found, recovered, and evidentiary property may only be completed at the order of the court of record, the North Dakota Parole Board or by a directive of the Department.
    - a. Notwithstanding other provisions of N.D.C.C. Chapter 29-31.1, 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 hearing unless waived for disposition of property in accordance with N.D.C.C. Chapter 29-31.1.
    - b. For property that may be lawfully released to the owner, the investigating officer may attempt to notify the owner that the Department is holding their property. When the property is released to the legal owner, the Evidence Inventory and Receipt form must be completed noting the items that are being released. Individuals receiving property must sign for all property received before property may be released.
    - c. Evidence destroyed using landfills must be done in accordance with North Dakota Department of Health and Human Service guidelines.
    - d. Disposed or returned evidence must be removed from Docstars using the Search Module.
6. **SIGNATURE:** This policy with procedures and applicable manuals becomes effective when signed by the Director of the Department of Corrections and Rehabilitation.

***This copy has been approved by the Director with the original signature on file.***