

**Robert Vallie-Assistant State's Attorney
Cass County State's Attorney's Office
Testimony Concerning House Bill 1143
March 15, 2023**

Chair Larson and members of the Senate Judiciary Committee,

My name is Robert Vallie and I am an Assistant State's Attorney with the Cass County State's Attorney's Office. I provide this testimony in opposition of the passage of House Bill 1143, which creates an additional subsection in North Dakota's theft statute, pertaining to leased or rented personal property.

Since my licensure in 2017, I have practiced the entirety of my career as a prosecutor. First in Ward County and now in Cass County. In that time, I have prosecuted theft cases, ranging from the stealing of a candy bar, to stealing cars, trailers and construction equipment. One may look at this bill as a straightforward fix to address those who may steal property rented or leased out. However, as a prosecutor who has dealt with the issues concerning rented property as a possible theft, I believe this committee having an understanding of the issues that can arise is important, while this Committee deliberates this bill.

Perhaps the biggest issue a prosecutor can face, in cases of theft involving rental property is showing that the suspect intends to deprive the owner of that property. When an alleged theft from a rental or leasing company comes forward, many times it is due to the property not being returned at the specified time, a credit card being declined or limited or no contact with the suspect at a certain point. These reports may include some or all of these factors. While any of these may provide a good starting point to suggest the possibility of a crime, it is not in and of itself a crime. Assuming one or more of the factors described is a part of a criminal report, all that is known for certain is a breach of contract. Circumstances can occur where the suspect has died, the property returned to a different facility that was not communicated or the property is taken by someone other than the suspect. In addition, when a rental company, who may be having difficulties with a suspect, provides a written or verbal extension to terms of the contract. These types of extensions, while understandable from a business perspective can further complicates a determination by law enforcement and prosecutors as to when a breach of contract ends, and a criminal violation begins.

To further complicate matters in determining that intent, becomes where the suspect is located at, when that intent to deprive the owner occurs. In cities like Fargo, Grand Forks and Wahpeton, that have sister cities across the river in Minnesota, it comes as no surprise that people and criminal activity can flow from one jurisdiction to another. If the property is listed on Facebook Marketplace for sale, flees from law enforcement or involved in some other criminal act, this provides evidence of an intent to deprive the owner. In my experience, it is common to see a vehicle reported stolen in one jurisdiction and the vehicle found or involved in a criminal act across the Red River at a later time. Depending on the facts of the specific case, I have had to decline prosecution or charge an individual with theft by possession versus theft by taking, due to that jurisdiction change. While I might suspect or guess that the suspect

intended to steal the vehicle at the very start, that is not sufficient to prove all the essential elements of the criminal offense, beyond a reasonable doubt. The same applies for rental or leased property. In today's world, where a rental company can rent property in Bismarck and return it in Birmingham, proving where that intent to deprive starts is further complicated.

In addition to the above-mentioned concerns, there are areas of the bill that either require clarification or are duplicative of what is already in Century Code. As proposed, a person would be guilty of theft if the person intended to wrongfully deprive the owner. In my review of the bill and Century Code, there is no definition of the term wrongfully. Under Title 12.1 a number of words are defined, in order to provide guidance as to whether a criminal offense has been committed. I believe, if this bill is to pass, it is important to define what the term wrongfully means, in order to ensure consistent application of the law across the state. Under Subsections (4)(b) and (4)(c) of the proposed changes to 12.1-23-02 of Century Code, this bill proposes two areas already covered under the current theft statute. Subsection (4)(b), which deals with the use of false or fictitious information, fits within the realm of Theft by Deception under 12.1-23-02(2). Subsection (4)(c), which deals with non-payment for the lease or rental, is a Theft of Services under 12.1-23-03(1). In these areas, if, law enforcement is able to acquire evidence of such violations, the means already exist to prosecute such crimes. As such, these proposed Subsections are duplicative and unnecessary to what already exists with our current Century Code.

Chair Larson and members of the Committee, thank you for the opportunity to provide testimony on this matter. I urge a Do Not Pass Recommendation for this bill and happy to answer any questions the Committee may have.

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