

OFFICE OF THE
MORTON COUNTY STATE'S ATTORNEY

210 2nd Ave. NW
Mandan ND, 58554

To: Senate Judiciary Committee
Hon. Diane Larson
Hon. Vice-Chair Paulson
Hon. Co-Vice-Chair Sickler
Members of the Committee

From: Chase R. Lingle, Morton County Senior Assistant State's Attorney

Re: HB 1213,

I am submitting this testimony in OPPOSITION to HB 1213

Committee Members I have a number of concerns on this bill. First this bill appears to have been brought forth on the unsupported notion that Prosecutors in this state are politically motivated to punish those who exercise their Second Amendment rights. Secondly, it ignores the reality of self-defense cases. Third, is the effect this bill could have on prosecution and the effect this could have on violent crimes in the State.

"Politically Motivated" Prosecutors:

The accusation by the chief sponsor of this bill, that "politically motivated" "anti-second amendment" Prosecutors in this state are seeking to "ignore clear evidence of self-defense" and are pursuing prosecutions because they are "solely after political gain", is utter nonsense. Not only that but it is offensive to the Prosecutors in this State who do the work to ensure that justice is met. First, Prosecutors are non-partisan, our elections are not based on party lines. Prosecutors do not run for office on the same grounds as legislators or governors for example. Prosecutors run on their ability to keep people safe, to ensure that justice is served in all cases. The State of North Dakota, and the citizens of North Dakota are very pro second amendment. It would be disadvantageous to pursue charges where there is an absolute and clearly justified self-defense claim. It would undermine the public's confidence in our offices' ability to ensure justice. Second, Prosecutors have an ethical duty to avoid maintaining charges that they know are not supported by probable cause. Prosecutors who fail in this ethical obligation could face sanctions up to and including disbarment. Third, we bring cases to trial because it is a jury's function to determine whether or not we have proven a case beyond a reasonable doubt. It is not to score some political points. We do our jobs to see that justice is done by virtue of the community. Most often the self-defense situations that we see are not clear cut, there are questions as to whether or not the claim of self-defense is valid, whether the public is willing to consider it to be a valid self-defense claim.

The Reality of Self Defense Cases:

When I saw this bill for the first time, two of my recent cases immediately sprang to mind. The first was a murder case. In that case, the victim had loaned the Defendant his vehicle, the Defendant did not bring it back when agreed upon, and instead brought it back hours later. The Defendant knew that it was likely to result in an altercation, and even noted that he contemplated parking the vehicle a block away and leaving it, in order to avoid a fight, but he didn't. The victim confronted the Defendant while the defendant was still within the vehicle, eventually the victim threw a punch that appeared to make contact with the Defendant. The Defendant then pulled out a dagger and stabbed the victim. After that the Defendant then got out of the vehicle and pinned the victim against the car, and stabbed the victim numerous additional times, all when the Defendant could have walked away. The Defendant left the victim: who staggered about 10 feet, collapsed against a fence and died. The Defendant made no attempts to contact emergency services, never reported the incident to law enforcement and additionally appeared to have taken steps to conceal his involvement, including allowing others to attempt to get rid of the weapon (by wrapping it in a bunch of bags with rocks and planning to throw it into the river). (Though they did not get the chance to actually do that). The Defendant argued self-defense at trial on the charge of murder. The Jury found him not guilty of murder, but did convict him on the lesser included charge of manslaughter. Manslaughter is still a "crime of violence" under this bill.

It's easy to boil down the evidence in this case to a simple statement, but that ignores the reality of the information possessed and processed by prosecutors. In the above case, the State had about 3,500+ documents/videos/photos/interviews etc. in evidence. That was 75 GB of data. For context text files would have a rate of 670,000 pages per gigabyte which amounts to 50,250,000 pages of data. Given that your standard ream of office paper is 500 pages, that's about 100,500 reams of office paper. The State prepared 226 exhibits for the trial. Trial lasted 3 days. This was no clear cut self-defense case.

As this bill is written, the Court in that case could have ordered the State to pay "reasonable expenses" because he was found not guilty of the charged offense murder, presumably due to "self-defense". I say presumably because the system doesn't keep track of why a jury is finding someone not guilty of something, nor should it. This seems like a problematic result. He killed someone and he was still found guilty of a crime of violence even if not the one charged.

The other case involved two individuals as well. The Defendant was accused of taking a firearm, giving the victim an "option" to either kill himself or be beaten to death by the Defendant. The Victim didn't want to kill himself so the Defendant beat him and gouged the victim's eyes. The Victim was able to get into a vehicle and drive off. Officers were originally told that the Defendant had gotten into a fight with the victim and that the victim had fired a gun at the Defendant. The Defendant portrayed himself as the victim and the victim as the aggressor. Law enforcement located the victim who had crashed into a ditch. Law enforcement ordered the victim out the vehicle at gun point (under the impression that he was the aggressor). When he was able to get out (he was blind at this point because his eyes were gouged and swollen shut) and the victim turned around the Deputy described what he saw as "like out of a horror movie". Further investigation occurred, and the Defendant was charged with aggravated assault (armed offender) and terrorizing. The State also charged Attempted Murder after additional information

was received and reviewed. Trial was had in both cases on all three Counts, the Defense argued self-defense. The Jury came back not guilty on the Attempted Murder case, and not guilty on the terrorizing count, but guilty on the Aggravated Assault and the armed offender finding. If there was a claim of self-defense that the jury believed and that is why the attempted murder case was a not-guilty verdict, then the State could have been ordered to pay costs under this bill. The Defendant beat and blinded his victim, (which he was convicted of), but because he was found not guilty of the attempted murder, the State could have been ordered to pay his costs in that case. This is a problematic potential result.

The Bill appears to misunderstand how a claim of self-defense operates within the criminal justice system in North Dakota. In order for a defendant to get a jury instruction on self-defense all that is required is a prima facie showing of self-defense. Which is as simple as one witness, even just the defendant themselves, saying that the victim punched them, or that the victim said "I'm going to kill you". It then becomes the State's burden to prove beyond a reasonable doubt that the Defendant was not acting in self-defense. The jury finding the Defendant not guilty in a "self-defense" case, isn't saying that the Defendant acted in self-defense, it's rather saying the State didn't have enough evidence that the Defendant wasn't acting in self-defense. By the time a case gets to trial, a Judge has already determined that the State has shown that probable cause to believe that the crime has been committed and that the defendant probably committed it. Self-defense is just that: a defense. It is an admission that the Defendant committed the underlying offense, but was justified in committing the offense.

The murder/manslaughter case I mentioned earlier had no other direct witnesses to the event, only the deceased victim, and the Defendant. There, thankfully, the incident was recorded by a surveillance camera from across the street, otherwise the only version of events the jury would have had would have been the Defendants'. If there weren't the camera, then the jury may not have believed that it had enough to find him guilty of anything, and the manslaughter charge may have also not been found. Or if the State had been so concerned about potentially having to pay expenses if the jury disagreed with the evidence or the State's interpretation of it, then a killer would still be on the streets. We are not gifted perfect cases, wrapped up in neat packages to present to juries. This is why we try cases, to have a jury determine guilt or innocence. We leave to jurors the determination of self-defense, so that 12 neutral persons are sitting in judgment.

The Real World Effects of This Bill:

This bill seeks to protect citizens who exercise their right to defend themselves. It seeks to make sure that they are reimbursed for expenses of being charged with and ultimately acquitted of violent crimes. The U.S. Supreme Court has stated; "Bearing the discomfiture and cost of a prosecution for crime even by an innocent person is one of the painful obligations of citizenship." Cobbledick v. United States, 309 U.S. 323, 325, 60 S. Ct. 540, 541, 84 L. Ed. 783 (1940). It is the price paid for freedom, and the price that is sometimes asked of us for justice. Our system is designed to put a claim of self-defense in front of a jury of their peers, because one person alone isn't in the best position to determine self-defense.

Because self-defense claims rely on the evidence as a whole, and the juries interpretation of that evidence and a variety of factors that can range from season, time, charisma of the parties, education and experiences of jurors and countless other factors it's difficult to say how a jury may rule. If the case involves a claim of self-defense and there is little to contradict that claim

because there is no video, no other witnesses, and/or no clear evidence disproving the defendant's statement that the victim came at them first, then this bill would act to chill that. The real impact of this bill is that some victims may not be given the opportunity at justice because the potential cost of the State exercising its right to a jury trial may be too high. This bill would potentially allow killers, and other violent individuals to be reimbursed for their violent deeds. It punishes prosecutors for seeking to do the job for which we exist, which is striving to ensure that justice is met. Sometimes justice is a not guilty verdict, sometimes it's a guilty verdict, but those determinations are why we have jury trials.

If prosecutors routinely stopped charging out potential "self-defense" related cases, the number of violent cases could increase, as criminals see claiming self-defense as a "get out of jail free" card. That would be devastating, as it is already difficult enough for the State to disprove claims of self-defense in Murder cases. In other violent crime cases the State typically has the victim's testimony to help rebut the Defendant's claim of self-defense, but even that is not a guarantee of a conviction.

Conclusion:

This bill fails to consider the practical impacts that it would have on the citizens of North Dakota. Not only does it have the potential to create a chilling effect on justice, it conversely would also financially impact the citizens of North Dakota. The Bill is based on a bad faith argument that Prosecutors act in politically motivated ways. Prosecutors seek to do justice, this bill seeks to subdue it.

I would urge a DO NOT PASS.

Chase R. Lingle ID # 8401
Assistant State's Attorney
Morton County Courthouse
210 Second Avenue NW
Mandan, ND 58554
701-667-3350