

Hearing date: March 12, 2025

Senate Judiciary Committee
2025 ND Legislature

Chairperson Diane Larson
Committee Members

From: Rozanna C Larson
Ward County State's Attorney

RE: House Bill 1225

Chairperson Larson and Members of the Committee,

This is my written testimony in favor of House Bill 1225 and ask the committee submits a DO PASS vote. I am the State's Attorney for Ward County and have been a prosecutor for 27 years.

House Bill 1225 has two amended sections for current statutes.

Section 1 Amendment amends the current Reckless Endangerment statute.

Currently the statute has two levels of offense, a class C felony if is proven the offender acted with extreme indifference to the value of human life, otherwise it is a class A misdemeanor. The NDSAA proposal is to elevate the offense to a Class B felony if a firearm is used in the commission of the offense. The State would still have to prove the element of extreme indifference to the value of human life, as well as prove beyond a reasonable doubt a firearm was used in the commission of the offense. These would be specific finding made by the fact finder.

The reason for this amendment is frankly due to the rise in offenses involving guns.

In Ward County we have had instances of guns being shot inside crowded bars, people shooting at each other inside hotels, and guns being fired on the streets with innocent people standing or milling about. There have also been instances of drive by shootings, where in the offender shoots into residences, apartment buildings, etc. This includes juvenile offenders as well as adult.

The question you may have, why can't we simply charge Attempted Murder in these cases. This is due to the legal culpability requirements for Attempted Murder. Any time "Attempted" is charged the culpability is intentional. The "intentional" culpability attaches to the elements of murder, not the act of shooting. In addition, to charge Attempted Murder there has to be a specific identified person the offender intended to murder. In most of these situations, the culpability of the offender is "willful." The offender is acting with extreme indifference to the value of any of the lives placed in danger.

Examples of Reckless Endangerment with a firearm include: shooting into a crowd, or inside a hotel room where bullets can go through walls of guests can be distinguish to other scenarios. Example without a firearm — driving 50 mph through town, blowing through traffic lights with others on the road, perhaps even causing collisions of other drivers.

This amendment would implicate another sentencing statute, NDCC 12.1-32-02.1. Specifically, if the offender is found guilty of the class B felony, there would be a mandatory minimum sentence of 4 years.

Section 2 Amendment relates to Dangerous/Habitual offender statute. NDCC 12.1-32-09. This is within the sentencing sections of the criminal code.

Currently prosecutors can file habitual offender on a defendant if they have two or more felony convictions in any state or states or the Federal Government. The statute specifically defines felony as being at least a class C felony or equivalent wherein the offense was punishable by a

maximum term of five years. This is consistent with ND law because the lowest level felony we have is a class C felony and the maximum punishment is five years.

As prosecutors we are dealing with offenders who may have a long criminal history of out-of-state felony convictions, but the maximum penalty may be less than five years. Essentially this limitation is allowing other states to define (and limit) what a habitual offender is when they come into our state and commit new felonies. Just as North Dakota has the right to determine the level of an offense, other States do as well. Factors that go into determining the level of the offense are numerous, such as: the type of offense, public outcry for stiffer (or lenient) sentences, and incarceration rates.

Currently, our statute treats North Dakota citizens differently (more harsh) than people who have committed offenses outside of North Dakota.

Example: I had an offender convicted of Robbery in the state of California, but the maximum punishment for that conviction was 3 years. I couldn't use that to allege habitual offender. We have that same scenario with convictions next door in Minnesota. Many states have different levels of offenses, including different maximum punishment including felonies. I don't know the reason for this expect for the possibility of different, more specific offender statutes. The other possibility may be in their efforts to control prison populations. Making this change treats all felons, lifetime ND residents and newcomers the same.

We are living in a time where people are more transient. This includes people with criminal records.

According to WestLaw, this particular section of 12.1-32-09 was last amended in 1995. Prior law only allowed filing habitual offender if there were two class B felony or above convictions, or one class B felony and two other offenses. The maximum term of imprisonment until 1995 was ten years. For thirty years this has remained as a maximum punishment of 5 years. It does not

consider what other States determine for maximum punishment. By amending it to "punishable by more than three hundred sixty days" it tracks with our state law for what is a felony, sentences over 360 days. Class A misdemeanor has a maximum punishment of 360 days. This amendment would then address other State's felonies but protect those with convictions deemed misdemeanors in our state.

This amendment does not implicate any other sentencing statutes. It does not create a minimum mandatory sentence. This statute does allow the court to sentence above the maximum sentence. A person charge with a class C felony could be sentence up to 10 years. For a class B felony, a maximum of 20 years may be imposed and for a class A felony a maximum of life imprisonment may be imposed. Often there is a term of imprisonment along with a suspended portion of the sentence where in the defendant is on supervised probation.

Fiscal Note

I see that this bill went through appropriations. It would appear DOCR (or somebody) has attached a 2.5-million-dollar appropriation to the bill. (I would note the original fiscal note was 13.6 million dollars.) I would question where this figure came from and ask to see the data that supports this appropriation. The bill, if passed, does increase the minimum mandatory sentence in 12.1-17-03, if a firearm or dangerous weapon is used, from 2 years to 4 years. (an additional 2 years of incarceration). I don't know if this appropriation considers only the additional 2 years, or if that amount is for the full 4 years. I would want to see how they predicted this impact and how many actual offenders they predicted would be impacted by this amendment to 12.1-17-03. That being said, if there are a significant number of offenders that would meet the new statute language, use of a firearm or dangerous weapon, then I ask you to continue to support the bill even if the appropriation can be justified, as public safety demands it. Further, I wonder if they are guessing at a cost for the "availability" of an increased penalty to habitual offenders, even though there is no mandatory sentence attached to the amendment in that regard.