

2025 HOUSE JUDICIARY

HB 1528

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1528
2/4/2025

A BILL for an Act to amend and reenact sections 12.1-21-01 and 12.1-21-02 of the North Dakota Century Code, relating to arson and endangering by fire or explosion; and to provide a penalty.

11:30 a.m. Chairman Klemin opened the hearing.

Members Present: Chairman Klemin, Vice-Chairman Vetter, Representatives Christianson, Hoverson, Johnston, McLeod, S. Olson, Satrom, Tveit, Wolff

Members Absent: Vice-Chair Karls, Representatives Henderson, Schneider, VanWinkle

Discussion Topics:

- North Dakota burning of structures laws
- Fires by individuals under the influence of drugs or alcohol

11:31 a.m. Representative Matt Ruby, North Dakota Representative for District 40, introduced the bill and provided testimony #34553.

11:36 a.m. Luke Kapella, Special Agent with the North Dakota Bureau of Criminal Investigations, testified in favor and provided testimony #34557.

11:44 a.m. Shane Weltikol, Battalion Chief of the Mandan City Fire Department, testified in favor and provided testimony #34566.

11:47 a.m. Travis Finck, Director at North Dakota Commission on Legal Counsel for Indigents, testified in opposition and provided testimony #34723.

Additional written testimony:

Ashley Lies, Executive Director of the North Dakota State's Attorneys' Association, submitted testimony in favor #33976

Darren Schimke, President of Professional Fire Fighters of North Dakota, submitted testimony in favor #34192

Ken Wangen, President of North Dakota Fire Chiefs Association, submitted testimony in favor #34376

11:57 a.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk

North Dakota State's Attorneys' Association

February 3, 2025

To: House Judiciary Committee
Hon. Chairman Klemin
Hon. Vice-Chairs Karls and Vetter
Members of the Committee

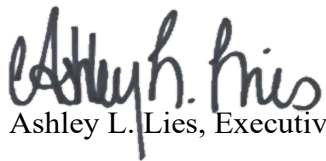
RE: House Bill No. 1528

Chairman Klemin, Vice-Chairs Karls and Vetter, and Members of the House Judiciary Committee:

The North Dakota State's Attorneys' Association (NDSAA) is submitting this letter requesting a **DO PASS** to House Bill 1528 with the provision that subsection 2 of 12.1-21-02 be removed.

We are requesting this change because we do not believe it is reasonable that a person's intoxication is prima facie evidence of their intent to endanger by fire or explosion. Other than that, we are in strong support of this Bill.

On behalf of the North Dakota State's Attorneys:



Ashley L. Lies, Executive Director

Professional Fire Fighters of North Dakota

Darren Schimke, President | 218-779-4122 | dschimke@wiktel.com

2/4/2025

House Judiciary Committee

Re: Support of HB 1528

Chairman Klemin and members of the House Judiciary Committee.

My name is Darren Schimke, President of the Professional Fire Fighters of North Dakota representing 420 professional firefighters from North Dakota. We appreciate the opportunity to provide testimony in support of HB 1528.

The language within HB 1528 addresses shortcomings that are being experienced under the current law. Some examples are, if someone is under the influence and starts a fire, they cannot be charged unless someone is injured or deceased. If someone starts their own property on fire, it is a civil matter because destroying your own property is not illegal. This becomes more common when couples are separating or the property is going through foreclosure.

Firefighters put their life on the line during each and every fire emergency. From the time they are dispatched, while responding to the scene, while on the fire ground rescuing trapped victims and extinguishing the flames, and even while retuning to the station. These arson fires needlessly add to the danger of the job. With your help, we can reduce these types of fires with HB 1528.

The PFFND respectfully request a Do Pass of HB 1528.

Darren Schimke

House Judiciary

Date 1/31/2025.

Testimony on House Bill 1528

Submitted by: Ken Wangen, Fire Chief Carrington Volunteer Fire and Rescue,

Chairman Klemin and the House Judiciary Committee, Good Morning. For the record my name is Ken Wangen, I am the Fire Chief for Carrington Volunteer Fire and Rescue and the President of the North Dakota Fire Chief Association. I want to thank you for considering House Bill 1528.

Arson

noun

ar·son 'är-sən

Synonyms of arson

: the willful or malicious burning of property (such as a building) especially with criminal or fraudulent intent.

It is clear. If a person intoxicated or otherwise willfully burns property with criminal or fraudulent intent, they are committing a crime.

Firefighters do not have a choice of not putting out a fire when called, therefore their lives are in danger on every call specially calls of this nature and intent. If a firefighter or civilian was to die in a fire of this nature it certainly would change the complexity of the issue.

This bill addresses aspects that currently would give an arsonist a possible escape clause and closes it. It also ups the possible punishment if a death was to occur during fires of this nature.

Please pass this bill to correctly punish individuals regardless of (chosen) impairment who willfully/maliciously engage in the burning of property.

Ken Wangen

Fire Chief Carrington Fire and Rescue

President North Dakota Fire Chiefs Association



North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Matthew Ruby

District 40
1400 Golden Valley Lane
Minot, ND 58703-1192
mruby@ndlegis.gov

COMMITTEES:

Human Services (Chair)
Energy and Natural Resources

4FEB25

Good Morning Chairman Klemin and Judiciary Committee,

My name is Matt Ruby and I represent District 40 in Minot. I brought HB 1528 which deals with an issue that law enforcement is having with bringing criminal charges for certain situations involving arson. Current law doesn't consider joint property that is damaged by one of the parties, the property of another. Another situation is when someone burns their own property that they have a joint stake in with another party, but it wasn't done for an insurance claim.

March 2022 Harvey Abusive husband attempted to burn up his home after a domestic dispute with his wife, who law enforcement escorted from their joint residence. 15 minutes later the husband started the house on fire, specifically their bed and the couch his wife had been sleeping on. The fire(s) did extensive damage, but burned themselves mostly out. Home had a mortgage against it, but owners let the insurance expire. Is joint property (a home) property of another. The prosecutor/court did not think so.

September 2022 Surrey Adult child burned up residence, with fire(s) started in multiple areas. Home was in his name and parents' name. Parents carried the insurance only in their name and made an insurance claim. No prosecution because the house was not burned for an insurance claim.

January 2024 Rugby Domestic Altercation between husband and wife. Husband burned up his and wife's car on video, which was the car his wife always drove. There was no insurance on car. No prosecution because joint property and no insurance claim (or because he started the fire for purposes other than collecting insurance.)

September 2024 Jamestown Wife left the husband and they are living apart. Husband torches the house and garage with her new pickup in it, which was in both their names. The wife made an insurance claim. No charges related to burning up joint property as a result of separation, and the husband burning the property was not for the intent of HIM collecting insurance.

We have a couple situations that this bill hopes to address. I had the Attorney General's office help with drafting. I would be happy to stand for any questions.

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1528

Introduced by

Representatives M. Ruby, Nelson

Senator Klein

1 A BILL for an Act to amend and reenact sections 12.1-21-01 and 12.1-21-02 of the North
2 Dakota Century Code, relating to arson and endangering by fire or explosion; and to provide a
3 penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 12.1-21-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **12.1-21-01. Arson.**

8 ~~A person~~

9 1. An individual is guilty of arson, a class B felony, if ~~he~~the individual starts or maintains a
10 fire or causes an explosion with intent to destroy an;

11 a. An entire or any part of a building or inhabited structure of another or a vital
12 public facility, ~~or if he starts or maintains a fire or causes an explosion with intent~~
13 ~~to destroy or;~~

14 b. Or damage ~~his~~the individual's own real or personal property for the purpose of
15 collecting insurance for the loss;

16 c. Or damage the individual's own real property for the purpose of depriving another
17 with a legal interest in the real property damaged or destroyed; or

18 d. Or damage the individual's own personal property for the purpose of depriving
19 another with a legal interest in the personal property damaged or destroyed, and

1 the value of the personal property damaged or destroyed has a value in excess
2 of two thousand dollars.

- 3 2. For purposes of this section, "a legal interest" includes, a joint legal interest by joint
4 ownership of the property, or an individual's own legal interest in property financed by
5 another, such as a mortgage, contract, deed, or lien.

6 **SECTION 2. AMENDMENT.** Section 12.1-21-02 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **12.1-21-02. Endangering by fire or explosion.**

- 9 1. ~~A person~~An individual is guilty of an offense if ~~he intentionally~~the individual willfully
10 starts or maintains a fire or causes an explosion and thereby recklessly:
11 a. Places another person in danger of death or bodily injury;
12 b. Places an entire or any part of a building or inhabited structure of another or a
13 vital public facility in danger of destruction; or
14 c. Causes damage to property of another constituting pecuniary loss in excess of
15 two thousand dollars.
16 2. If an individual is under the influence of an intoxicating liquor or drug which resulted in
17 or contributed to starting a fire, the individual's state of being under the influence is
18 prima facie evidence of the intent to violate the provisions of this section.
19 3. For purposes of this section, "person in danger" includes, fire department, law
20 enforcement, and emergency medical personnel, a firefighter, and a volunteer
21 firefighter while responding to a fire or during fire suppression efforts.
22 4. The offense is a class A felony if the fire or explosion results in the death of another.
23 The offense is a class B felony if the actor places another person in danger of death
24 under circumstances manifesting an extreme indifference to the value of human life.
25 Otherwise it is a class C felony.

JUDICIARY COMMITTEE
FEBRUARY 4TH, 2025
TESTIMONY OF LUKE KAPELLA
OFFICE OF THE ATTORNEY GENERAL
HOUSE BILL 1528

Chairman Klemin and Members of the Judiciary Committee:

My name is Luke Kapella. I am a Special Agent with the North Dakota Bureau of Criminal Investigation (NDBCI). I am here today to advocate for the passage of a bill for an Act to amend and reenact sections 12.1-21-01 and 12.1-21-02 of the North Dakota Century Code, relating to arson and endangering by fire or explosion; and to provide a penalty. This legislation is essential to 1) help protect the first responders of North Dakota and 2) to hold arsonists accountable on both intentionally and recklessly started fires. Each of you have been given an amended version that I'll detail for you.

Introduction

Starting 2022, the North Dakota Bureau of Criminal Investigation (NDBCI), the North Dakota State Fire Marshals Office (NDSFM), and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), formed the North Dakota Fire and Arson Strike Team (ND FAST) under State Fire Marshal Doug Nelsen and BCI Director Lonnie Grabowska. The goal of the ND Fire and Arson Strike Team is to provide a cooperative effort amongst experts in fire and law enforcement, to investigate, assist, and aid local agencies in fire investigations throughout the State of North Dakota and on Tribal Lands.

One of the driving factors in the creation of the ND FAST was to bring the perspective of licensed law enforcement personnel into fire investigations, specifically highly trained and experience criminal investigators. Typically fire investigators with the State Fire Marshals Office and local fire departments are not sworn peace officers or had ever been trained in the complexities of criminal investigations and the court process. Before the creation of the ND FAST, if a fire investigator uncovered suspicious or criminal activity at a fire, they would have to turn that aspect of the investigation over to law enforcement. Also typical, was that the law enforcement officer had little knowledge of fire investigation, resulting in a very inefficient and ineffective process. ND FAST uses a cooperative effort of fire and law enforcement to investigate fires. This brings together expertise of both disciplines, while also allowing for cross training between disciplines.

The ND FAST has been implemented Statewide for the last couple of years to great success. The Team has investigated a wide variety of fires from small, abandoned farmsteads to large

commercial grain elevators. The ND FAST has also investigated a wide range of criminal arsons, from simple set fires to violent homicides. The ND FAST, through their expansive investigations, has identified that current fire laws in North Dakota need to be improved. These laws need to be enhanced to 1) hold individuals accountable when they intentionally, knowingly, or recklessly start fires and 2) to protect the first responders who often put their lives in danger in responding to these fires; this includes firefighters, police, and EMS personnel.

ARSON

ND FAST INVESTIGATIONS EXAMPLES

1. 2022 – Wells County, ND

- a. A domestic violence incident occurred between spouses at their residence. Law enforcement provided assistance in moving the woman to safety away from the residence. Fifteen minutes later the husband started the house on fire, specifically their bed and the couch where his wife had been sleeping. The fires he set resulted in extensive damage to the home and the deaths of multiple house cats. The home had a mortgage against it, but the owners had let the insurance expire. The courts ruled that the current arson statute did not fit the details of the case. Even though a husband destroyed the home of his wife, the residence technically also belonged to him; as the Century Code currently stands, it is not illegal to destroy your own property. Therefore, criminal charges could not be brought forth in this case.

2. 2022 – Ward County, ND

- a. An adult child burned a residence by intentionally starting fires in multiple locations. The home was jointly owned by the adult child and his parents. However, the parents carried the insurance in their names only. The parents filed an insurance claim for damages caused by the fires their adult child started, which destroyed the home. The prosecution deemed that there could be no prosecution for arson. In this case the adult child destroyed property that he owned but did not file an insurance claim.

3. 2024 – Rugby, ND

- a. A domestic altercation between spouses occurred at their residence. In an act of rage, the husband set fire to the couples' vehicle that was parked in the driveway, destroying it. The vehicle was jointly owned, however that was one his wife typically drove. There was also no insurance on the vehicle. The courts stated that the arson statute did not apply, ruling that the vehicle was

considered joint property, and no insurance claim was made. Therefore, it was legal for the husband to destroy this jointly owned property, which was parked on jointly owned property, even though it resulted in significant hardship to his wife.

As described in the above cases, the Courts and prosecutors have established that “joint” property, like that of spouses or parents and adult children, is NOT “property of another.” Therefore, based on the current reading of the arson statute, destroying one’s own property is not arson, even when another person has joint ownership, unless a claim for insurance is filed in an attempt to profit from the fire damage. Domestic violence incidents, like the incidents I described, are a prime example of how this loophole in current Century Code is being exploited; individuals committing this type of arson cannot be criminally charged for their actions. If those same domestic violence incidents had occurred with a person using a firearm or knife to terrorize the victim, the aggressor could have been prosecuted for terrorizing and destruction of property. When an individual utilizes fire as a weapon to harm or terrorize a victim and destroy property, there is no criminal repercussion related to the fire. The purpose of this bill is to hold individuals criminally responsible when fire is used as a weapon to terrorize another person or to destroy jointly owned property, including that of a spouse or a bank holding a mortgage to that property.

ENDANGERING BY FIRE OR EXPLOSION

ND FAST INVESTIGATION EXAMPLES

1. 2024 - Bismarck, ND

- a. An individual was squatting in the garage of his friend’s residence. The individual admitted to being intoxicated and using drugs while in the garage. The individual stated that after using drugs, he passed out in a truck which was parked inside the garage. The individual awoke to the smell of smoke and observed fire inside the vehicle. Unable to extinguish the fire, the individual fled the residence, along with others who had been asleep at the time the fire started. Multiple first responders arrived to manage this dangerous situation as the fire intensified at the residence, engulfing the structure. Police, Emergency Medical Services, and Fire Firefighters all responded to protect lives and mitigate damage. These first responders endangered their own lives to serve and protect the public.

This example highlights a situation in which an individual under the influence of intoxicating substances, accidentally or intentionally, started a fire. The actions of this individual directly affected the lives of many other individuals: 1) the people sleeping in the home who were in imminent danger of the fire, 2) the police officers who rushed to the scene to aid and search for victims of the fire, 3) the firefighters working diligently to extinguish the fire before it spread to neighboring homes, 4) the EMS personnel giving aid to those affected by the fire, and 5) the neighboring residents who had to evacuate their homes in case of fire spread which would endanger their lives and property. The actions of one individual under the influence affected and engaged all these other lives. It is the purpose of this legislation to hold individuals accountable whose actions, particularly while under the influence of drugs and alcohol, placing others in danger by way of fire.

Furthermore, this bill specifies what a "person in danger" includes. In past cases, charges of Endangering By Fire have been dismissed by the courts due to the fact that the endangerment claim wasn't valid for first responders like firefighters. Dismissal was based on the idea that they could not be endangered by fire because it is "what they signed up for," or "it was part of the job". Additionally cited in dismissals was the fact that firefighters wear fire-resistant clothing and protective equipment to shield them from fire danger. I strongly disagree, and we must act to provide stronger protections for North Dakota firefighters. As a law enforcement officer if I was shot in my ballistic vest during the course of my duties, the suspect would be charged with attempted homicide. The case would not dismiss simply because I have a vest and a gun, and it is "what I signed up for." Fire scenes are very dangerous for firefighters; 89 firefighters were lost in the line of duty in the U.S. in 2023. And that danger extends to all first responders who respond to a fire emergency. Furthermore, first responders experience not only direct dangers, like heat and falling debris, but also indirect dangers such as chemicals and cancerous vapors that may have long-term negative health consequences for them. The individual who places these first responders in danger should be held accountable.

Conclusion

Since the creation of the ND Fire and Arson Strike Team three years ago, the need to revise North Dakota fire laws has become strikingly apparent. This legislation addresses the need to clearly define the act of arson and to protect victims when fire is used as a weapon to deprive or terrorize them. This legislation also clarifies that when a person who is intoxicated with alcohol or drugs recklessly causes a fire, they can be held responsible for endangering the lives of others in that fire. Finally, this legislation clarifies who is considered endangered in the emergency response to a fire. North Dakota needs to update the Century Code to hold accountable individuals who commit arson or endanger others by fire. The ultimate goal of

this legislation is protecting the citizens of our state and the first responders who serve and protect them.

Thank you for your time and consideration. I respectfully ask you to support this important legislation.

25.1221.01000

Sixty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1528

Introduced by

Representatives M. Ruby, Nelson

Senator Klein

1 A BILL for an Act to amend and reenact sections 12.1-21-01 and 12.1-21-02 of the North
2 Dakota Century Code, relating to arson and endangering by fire or explosion; and to provide a
3 penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 12.1-21-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **12.1-21-01. Arson.**

8 A person

9 1. An individual is guilty of arson, a class B felony, if ~~he~~the individual starts or maintains a
10 fire or causes an explosion with intent to destroy an:

11 a. An entire or any part of a building or inhabited structure of another or a vital
12 public facility, ~~or if he starts or maintains a fire or causes an explosion with intent~~
13 ~~to destroy or;~~

14 b. Or damage histhe individual's own real or personal property for the purpose of
15 collecting insurance for the loss;

16 c. Or damage the individual's own real property for the purpose of depriving another
17 with a legal interest in the real property damaged or destroyed; or

18 d. Or damage the individual's own personal property for the purpose of depriving
19 another with a legal interest in the personal property damaged or destroyed, and
20 the value of the personal property damaged or destroyed has a value in excess
21 of two thousand dollars.

22 2. For purposes of this section, "a legal interest" includes, a joint legal interest by joint
23 ownership of the property, or an individual's own legal interest in property financed by
24 another, such as a mortgage, contract, deed, or lien.

1 **SECTION 2. AMENDMENT.** Section 12.1-21-02 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **12.1-21-02. Endangering by fire or explosion.**

- 4 1. ~~A person~~An individual is guilty of an offense if ~~he intentionally~~the individual willfully
5 starts or maintains a fire or causes an explosion and thereby recklessly:
- 6 a. Places another person in danger of death or bodily injury;
- 7 b. Places an entire or any part of a building or inhabited structure of another or a
8 vital public facility in danger of destruction; or
- 9 c. Causes damage to property of another constituting pecuniary loss in excess of
10 two thousand dollars.
- 11 2. If an individual is under the influence of an intoxicating liquor or drug which resulted in
12 or contributed to starting a fire, the individual's state of being under the influence is
13 prima facie evidence of the intent to violate the provisions of this section.
- 14 3. For purposes of this section, "person in danger" includes, fire department personnel, a
15 firefighter, and a volunteer firefighter while responding to a fire or during fire
16 suppression efforts.
- 17 4. The offense is a class A felony if the fire or explosion results in the death of another.
18 The offense is a class B felony if the actor places another person in danger of death
19 under circumstances manifesting an extreme indifference to the value of human life.
20 Otherwise it is a class C felony.

House Bill 1528 Written Testimony

Tuesday, February 4th, 11:00am – Room 327B

Mr. Chairman and members of the committee, thank you for the opportunity to provide testimony in strong support of House Bill 1528. My name is Shane Weltikol, and I serve as the Battalion Chief and Fire Investigator for the Mandan Fire Department. I am here today to emphasize the critical need for this legislation and to advocate for its passage as a necessary enhancement to North Dakota's arson and fire related statutes.

As fire service professionals, we see firsthand the devastation caused by intentional fires. Arson and reckless fire setting not only destroy property but also endanger the lives of innocent civilians, first responders, and entire communities. House Bill 1528 strengthens existing laws by closing legal gaps which enhances accountability and ensures that those who put lives at risk are held responsible for their actions.

The passage of this bill is not just about legal definitions. It is about protecting lives. Every year, arson and reckless fire setting cause millions of dollars in damages, result in injuries or fatalities, and puts undue strain on emergency response resources. Strengthening the law will provide prosecutors with clearer guidelines to ensure justice for victims and deter future offenses.

Moreover, as a fire service leader, I believe this bill will help prevent tragedies by discouraging reckless behavior and ensuring that those who endanger others face appropriate consequences. Our firefighters and first responders put their lives on the line to protect our

communities and must do everything in our power to support measures that enhance public safety and prevent unnecessary risk.

I urge this committee to support House Bill 1528 and advance it through the legislative process. By passing this bill you are taking a critical step in ensuring the safety of North Dakota's citizens and those who dedicate their lives to protecting them. Thank you for your time and consideration. I welcome any questions you may have.

Notes for Shane Only (not given during testimony)

Expanded Definition of Arson: Clarifies that arson includes intentionally setting fire to one's own property when done with the intent to defraud insurance companies or deprive another individual with a legal interest in the property. This addition is essential in addressing fraudulent and malicious destruction which can have severe financial and legal consequences.

Strengthened Protections for Firefighters and First Responders: Recognizes that first responders, including career and volunteer firefighters, are among those endangered by reckless fire setting and acknowledges the immense risk we take when responding to arson related incidents. Ensuring that endangerment includes fire personnel reinforces the seriousness of these offenses and helps deter reckless behavior.

Accountability for Fire Setting While Under the Influence: Establishes that being under the influence of drugs or alcohol at the time of a fire can serve as prima facie evidence of intent. This provision is particularly important in cases where intoxication leads to negligence as it holds individuals accountable for the consequences of their actions.

Clearer and Stricter Penalties: Appropriately classifies offenses based on the severity of harm caused. Ensures that cases where a fire results in death or extreme risk to human life are treated as serious felonies and aligns the law with the gravity of these crimes. This sends a strong message that reckless fire setting will not be tolerated.



North Dakota Chapter of the International Association of Arson Investigators

February 3, 2025

To: House Judiciary Committee
Hon. Chairman Klemin
Hon. Vice-Chairs Karls and Vetter
Members of the Committee

RE: House Bill 1528

Chairman Klemin, Vice-Chairs Karls and Vetter, and Members of the House Judiciary Committee:

The North Dakota Chapter of the International Association of Arson Investigators (NDIAAI) is submitting this letter requesting a **DO PASS** to House Bill 1528.

The safety of the Emergency Responder community within the State of North Dakota is a priority of the NDIAAI. House Bill 1528 provides the necessary language for that safety.

On behalf of the North Dakota Chapter of the International Association of Arson Investigators:

Kenton K. Chromey
NDIAAI President

HB 1528
69th Legislative Assembly
House Judiciary Committee
February 3, 2025
Testimony of Travis W. Finck, Executive Director, NDCLCI

Chairman Klemin, members of the House Judiciary Committee, my name is Travis Finck and I am the Executive Director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense services in North Dakota. I rise today on behalf of the Commission to provide testimony in opposition to House Bill 1528.

The Commission is concerned with the proposed changes in Section 2 of the bill. The first of those concerns is changing the culpability from intentionally starting the fire to recklessly starting the fire. This has consequences and essentially defeats the purpose of the statute. Endangering by fire or explosion is the act of using fire as a weapon. The current language requires that intentional act of starting the fire, and then considers the reckless nature of the intentional act. As written, HB 1528 would require a reckless act, and then consider the reckless nature of the reckless act. It simply doesn't work as currently written. If there is appetite to change the culpability, the committee may want to consider "knowingly or intentionally", but willful just doesn't work.

The second issue the Commission has with section 2 is an individual "under the influence" being prima facie evidence of an intent to commit this crime. This is logically inconsistent with reckless conduct. You cannot have prima facie evidence of intent when a reckless act is all that is required. Quite simply, this also conflicts with other provisions of the code dealing with culpability and an individual being under the influence. Being under the influence of alcohol or drugs is already discussed in the code in dealing with culpability. This bill would conflate being under the influence with being intoxicated, and they are two very different legal terms. NDCC 12.1-04-02 provides "Intoxication is not a defense to a criminal charge. Intoxication does not, in itself, constitute mental disease or defect within the meaning of section 12.1-04-04. Evidence of intoxication is admissible whenever it is relevant to negate or to establish an element of the offense charged." This section of the

bill would be best removed as being under the influence and intoxication regarding culpability is already established in law.

Lastly, I am unsure why there is an increase in penalty on page 2 at line 17. If an actor were to intentionally start a fire and a death resulted, it would be felony murder. This is already covered in code and is a Class AA felony under NDCC 12.1-16-01(c). If the individual were to commit a reckless act that caused a death, the code at NDCC 12.1-16-02 calls this manslaughter which is a Class B felony. If you change the section as suggested in this bill, you could end up in a scenario with different punishments for the same requirements. This could cause some multiplicity and double jeopardy concerns under the fifth amendment to the U.S. Constitution and Article I, Section 12 of the Constitution of North Dakota.

I did have an opportunity to meet with a states' attorney regarding the position they are taking. I don't believe we are that far off and believe we could work with the bill sponsor, the agent requesting the bill, and state's attorneys to resolve any differences in a short period of time.

For the reasons states herein, the Commission requests a DO NOT PASS in the current form of the bill, but would be willing to work on amendments.

Respectfully Submitted:



Travis W. Finck
Executive Director, NDCLCI

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1528
2/4/2025

A BILL for an Act to amend and reenact sections 12.1-21-01 and 12.1-21-02 of the North Dakota Century Code, relating to arson and endangering by fire or explosion; and to provide a penalty.

4:11 p.m. Chairman Klemin opened the hearing.

Members Present: Chairman Klemin, Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Henderson, Hoverson, Johnston, McLeod, Olson, Tveit, Wolff, Schneider

Members Absent: Representatives Satrom, VanWinkle

Discussion Topics:

- Committee action

4:15 p.m. Representative Vetter moved to Amend and change "willfully" to "intentionally" on page 2 line 4, add "law enforcement and emergency medical personnel" to page 2 line 14, and remove lines 11-13, and 17 on page 2.

4:15 p.m. Representative Schneider seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	Y
Representative Jeff Hoverson	Y
Representative Daniel Johnston	Y
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	A
Representative Mary Schneider	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	A
Representative Christina Wolff	Y

4:19 p.m. Motion passed 12-0-2

4:19 p.m. Representative S. Olson moved a Do Pass as Amended.

4:20 p.m. Representative Vetter seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	Y
Representative Jeff Hoverson	Y
Representative Daniel Johnston	Y
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	A
Representative Mary Schneider	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	A
Representative Christina Wolff	Y

4:21 p.m. Motion passed 12-0-2

4:21 p.m. Representative S. Olson will carry the bill.

4:21 p.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk

February 4, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1528

Introduced by

Representatives M. Ruby, Nelson

Senator Klein

1 A BILL for an Act to amend and reenact sections 12.1-21-01 and 12.1-21-02 of the North
2 Dakota Century Code, relating to arson and endangering by fire or explosion; and to provide a
3 penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 12.1-21-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **12.1-21-01. Arson.**

8 ~~A person~~

9 1. An individual is guilty of arson, a class B felony, if ~~he~~the individual starts or maintains a
10 fire or causes an explosion with intent to destroy an:

11 a. An entire or any part of a building or inhabited structure of another or a vital
12 public facility, ~~or if he starts or maintains a fire or causes an explosion with intent~~
13 ~~to destroy or;~~

14 b. Or damage his~~the individual's~~ own real or personal property for the purpose of
15 collecting insurance for the loss;

16 c. Or damage the individual's own real property for the purpose of depriving another
17 with a legal interest in the real property damaged or destroyed; or

18 d. Or damage the individual's own personal property for the purpose of depriving
19 another with a legal interest in the personal property damaged or destroyed, and

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1 the value of the personal property damaged or destroyed has a value in excess
2 of two thousand dollars.

3 2. For purposes of this section, "a legal interest" includes, a joint legal interest by joint
4 ownership of the property, or an individual's own legal interest in property financed by
5 another, such as a mortgage, contract, deed, or lien.

6 **SECTION 2. AMENDMENT.** Section 12.1-21-02 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **12.1-21-02. Endangering by fire or explosion.**

9 1. ~~A person~~An individual is guilty of an offense if he ~~he~~the individual intentionally~~the~~
10 ~~individual willfully~~ starts or maintains a fire or causes an explosion and thereby
11 recklessly:

- 12 a. Places another person in danger of death or bodily injury;
13 b. Places an entire or any part of a building or inhabited structure of another or a
14 vital public facility in danger of destruction; or
15 c. Causes damage to property of another constituting pecuniary loss in excess of
16 two thousand dollars.

17 2. ~~If an individual is under the influence of an intoxicating liquor or drug which resulted in~~
18 ~~or contributed to starting a fire, the individual's state of being under the influence is~~
19 ~~prima facie evidence of the intent to violate the provisions of this section.~~

20 ~~3.~~ For purposes of this section, "person in danger" includes, fire department, law
21 enforcement, and emergency medical personnel, a firefighter, and a volunteer
22 firefighter while responding to a fire or during fire suppression efforts.

23 ~~4.3. The offense is a class A felony if the fire or explosion results in the death of another.~~
24 The offense is a class B felony if the actor places another person in danger of death
25 under circumstances manifesting an extreme indifference to the value of human life.
26 Otherwise it is a class C felony.

**REPORT OF STANDING COMMITTEE
HB 1528**

Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS** ([25.1221.01002](#)) and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1528 was placed on the Sixth order on the calendar.

2025 SENATE INDUSTRY AND BUSINESS

HB 1528

2025 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1528
3/19/2025

A bill relating to arson and endangering by fire or explosion; and to provide a penalty.

2:42 p.m. Chairman Barta opened the hearing.

Members present: Chairman Barta, Vice-Chair Boehm, Senator Klein, Senator Kessel, Senator Enget

Discussion Topics:

- Joint property damages and liability
- Intent insurance claims, and criminal charges
- Emergency first responders
- Class B and Class C felonies
- Endangerment and liability of perpetrator
- Financial restitution through court systems

2:43 p.m. Representative Matthew Ruby, District 40, testified in favor, introduced the bill, and submitted testimony #43092.

2:45 p.m. Craig Zachmeier, ND Bureau of Criminal Investigation (BCI), testified in favor and submitted testimony #42976.

2:52 p.m. Chairman Barta closed the hearing.

2:52 p.m. Senator Klein moved a Do Pass.

2:52 p.m. Senator Kessel seconded the motion.

Senators	Vote
Senator Jeff Barta	Y
Senator Keith Boehm	A
Senator Mark Enget	Y
Senator Greg Kessel	Y
Senator Jerry Klein	Y

Motion passed 4-0-1.

Senator Klein will carry the bill.

Additional testimony:

Darren Schimke, President Professional Fire Fighters of ND, submitted testimony #42928 in favor.

Senate Industry, Business and Labor Committee

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2:56 p.m. Chairman Barta adjourned the meeting.

Audrey Oswald, Committee Clerk

**REPORT OF STANDING COMMITTEE
ENGROSSED HB 1528 ([25.1221.02000](#))**

Industry and Business Committee (Sen. Barta, Chairman) recommends **DO PASS** (4 YEAS, 0 NAYS, 1 ABSENT OR EXCUSED AND NOT VOTING). HB 1528 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

Professional Fire Fighters of North Dakota

Darren Schimke, President | 218-779-4122 | dschimke@wiktel.com

3/19/2025

Senate Industry and Business Committee

Re: Support of HB 1528

Chairmen Barta and members of the Senate Industry and Business Committee.

My name is Darren Schimke, President of the Professional Fire Fighters of North Dakota representing 420 professional firefighters from North Dakota. We appreciate the opportunity to provide testimony in support of HB 1528.

The language within HB 1528 addresses shortcomings that are being experienced under the current law. As an example, if someone starts their own property on fire, it is a civil matter because destroying your own property is not illegal. This becomes more common when couples are separating or the property is going through foreclosure.

Firefighters put their life on the line during each and every fire emergency. From the time they are dispatched, while responding to the scene, while on the fire ground rescuing trapped victims and extinguishing the flames, and even while retuning to the station. These arson fires needlessly add to the danger of the job. With your help, we can possibly reduce these types of fires with HB 1528.

The PFFND respectfully request a Do Pass of HB 1528.

Darren Schimke

Industry and Business Committee
March 19, 2025
Testimony of Craig Zachmeier
Office of Attorney General-BCI
House Bill 1528

Chairman Barta and Committee Members,

My name is Craig Zachmeier, and I'm a Special Agent with the North Dakota Bureau of Criminal Investigations. I have worked the criminal side of fires since 2003, when I attended the National Fire Academy in Maryland, and have since become a Certified Fire Investigator and Certified Instructor through the International Association of Fire Investigators. I am one of four law enforcement officers in the State of North Dakota, including BCI S/A Luke Kapella and two ATF Special Agents, who are Certified Fire Investigators.

In November 2022, State Fire Marshall Doug Nelson and BCI Director Lonnie Grabowska formed a fire response team referred to as the Fire and Arson Strike Team (FAST), to which I am assigned. With the formation of FAST, non-law enforcement fire investigators work in coordination with law enforcement fire investigators who are trained and certified to investigate the origin and cause of fires. By bringing the law enforcement perspective into the investigations of fires, we have identified that North Dakota Century Code sections 12.1-21-01 Arson and 12.1-21-02 Endangering by Fire could be improved to hold arsonists and domestic violence offenders accountable.

House Bill 1528 unanimously passed the House Judiciary committee and the House floor in its current, engrossed version.

As Investigators, we have identified that fire has been utilized as a weapon to burn down a spouse's or significant other's property including homes, vehicles, furniture, and clothing. Under the current statutes, there is an open question whether or not it is illegal to burn and destroy your own property or joint property, which the items in a domestic relationship usually are. The changes to section 12.1-21-01-Arson under House Bill 1528, would clarify that it is a crime to burn and destroy jointly owned property that someone like a spouse, significant other, or financial institution has a legal interest in.

This scenario happens in North Dakota. In a couple recent cases, arsonists allowed the insurance coverage on jointly held properties to expire before burning the properties during domestic violence altercations. It was determined that charges related to arson or related to the mental and psychological anguish caused by the fire, were not prosecutable. In one case, prosecutors were able to charge the suspect with animal cruelty as the wife's cat died in the fire.

The bill also amends section 12.1-21-02-Endangering by Fire by clarifying that our first responders are included in the category of people whose endangerment will trigger criminal liability under the statute. Specifically, if an individually recklessly endangers fire fighters, volunteer fire fighters, law enforcement officers, or emergency medical personnel by **intentionally** starting or maintaining a fire or causing an explosion, the individual is guilty of a felony. With the FAST usually responding after the fire suppression is completed, we have said many times, "Good thing no one got hurt" referring to the fire fighters. Adding this provision will hold arsonists responsible for their actions and ensure that first responders are treated equally to other residents of our state. Their safety and security are just as important, and criminals should not be able to jeopardize them without consequences.

Thank you for time.



North Dakota House of Representatives

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Representative Matthew Ruby

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COMMITTEES:

Human Services (Chair)
Energy and Natural Resources

19MAR25

Good afternoon, Chairman Barta and Committee,

My name is Matt Ruby and I represent District 40 in Minot. I brought HB 1528 which deals with an issue that law enforcement is having with bringing criminal charges for certain situations involving arson. Current law doesn't consider joint property that is damaged by one of the parties, the property of another. Another situation is when someone burns their own property that they have a joint stake in with another party, but it wasn't done for an insurance claim.

March 2022 Harvey Abusive husband attempted to burn up his home after a domestic dispute with his wife, who law enforcement escorted from their joint residence. 15 minutes later the husband started the house on fire, specifically their bed and the couch his wife had been sleeping on. The fire(s) did extensive damage, but burned themselves mostly out. Home had a mortgage against it, but owners let the insurance expire. Is joint property (a home) property of another. The prosecutor/court did not think so.

September 2022 Surrey Adult child burned up residence, with fire(s) started in multiple areas. Home was in his name and parents' name. Parents carried the insurance only in their name and made an insurance claim. No prosecution because the house was not burned for an insurance claim.

January 2024 Rugby Domestic Altercation between husband and wife. Husband burned up his and wife's car on video, which was the car his wife always drove. There was no insurance on the car. No prosecution because of joint property and no insurance claim (or because he started the fire for purposes other than collecting insurance.)

September 2024 Jamestown Wife left the husband, and they are living apart. The husband torches the house and garage with her new pickup in it, which was in both their names. The wife made an insurance claim. No charges related to burning up joint property as a result of separation, and the husband burning the property was not for the intent of HIM collecting insurance.

We have a couple situations that this bill hopes to address. I had the Attorney General's office help with drafting. I would be happy to stand for any questions.