

**2023 HOUSE JUDICIARY**

**HB 1213**

# 2023 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Room JW327B, State Capitol

HB 1213  
1/17/2023

Relating to reimbursement for a finding of self-defense when charged with a crime of violence; and to provide for application.
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Chairman Klemin opened the hearing on HB 1213 at 10:49 AM. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, Rep. Vetter

## **Discussion Topics:**

- Reimbursement for self-defense
- Stand your ground law
- Politically charged cases

Rep Rios: Introduced the bill. Testimony #13592

## **Additional Written Testimony:**

Wade Enget, Mountrail County State's Attorney: Testimony #13790

Hearing closed at 10:57 AM.

Delores Shimek, Committee Clerk

# 2023 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Room JW327B, State Capitol

HB 1213  
1/17/2023

Relating to reimbursement for a finding of self-defense when charged with a crime of violence; and to provide for application
---

Chairman Klemin opened the meeting on HB 1213 at 2:41 PM. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Christensen, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, Rep. Vetter. Absent: Rep. Bahl, Rep. Cory

## Discussion Topics:

- Civil standard
- Self defense
- Violent actions
- Damages

Rep. Vetter moved to adopt amendment 23.0643.01001; Seconded by Rep. Satrom

<b>Representatives</b>	<b>Vote</b>
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	A
Representative Cole Christensen	Y
Representative Claire Cory	A
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll Call Vote: 11 Yes 0 No 2 Absent

Motion Carried.

Rep. Shannon Roers Jones moved to Do Not Pass as amended.  
Seconded by Rep. Schneider

<b>Representatives</b>	<b>Vote</b>
Representative Lawrence R. Klemin	N

Representative Karen Karls	N
Representative Landon Bahl	A
Representative Cole Christensen	N
Representative Claire Cory	A
Representative Donna Henderson	N
Representative SuAnn Olson	N
Representative Nico Rios	N
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	N
Representative Mary Schneider	Y
Representative Lori VanWinkle	N
Representative Steve Vetter	N

Roll Call Vote: 2 Yes 9 No 2 Absent

Motion Failed.

Rep. Christensen moved a do pass as amended.

Seconded by Rep. Rios

<b>Representatives</b>	<b>Vote</b>
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	A
Representative Cole Christensen	Y
Representative Claire Cory	A
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	N
Representative Bernie Satrom	N
Representative Mary Schneider	N
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll Call Vote: 8 Yes 3 No 2 Absent Carrier: Rep. Rios

Meeting closed at 3:12 PM.

*Delores Shimek, Committee Clerk by Donna Lynn Knutson*

January 17, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1213

Page 1, line 12, after the underscored comma insert "the court may order"

Page 1, line 12, replace "shall" with "to"

Page 1, remove lines 16 through 24

Page 2, remove lines 1 through 3

Renumber accordingly

AGK  
1-17-23  
(1-1)

**REPORT OF STANDING COMMITTEE**

**HB 1213: Judiciary Committee (Rep. Klemin, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 3 NAYS, 2 ABSENT AND NOT VOTING). HB 1213 was placed on the Sixth order on the calendar.

Page 1, line 12, after the underscored comma insert "the court may order"

Page 1, line 12, replace "shall" with "to"

Page 1, remove lines 16 through 24

Page 2, remove lines 1 through 3

Renumber accordingly

**2023 SENATE JUDICIARY**

**HB 1213**

# 2023 SENATE STANDING COMMITTEE MINUTES

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

HB 1213  
3/28/2023

A bill relating to reimbursement for a finding of self-defense when charged with a crime of violence; and to provide for application.
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10:33 AM Chairman Larson opened the meeting.  
Chairman Larson and Senators Myrdal, Luick, Estenson, Paulson and Braunberger are present. Senator Sickler was absent but joined the meeting at 10:51 AM.

**Discussion Topics:**

- Defense costs
- Attorney fees

10:33 AM Representative Rios introduced the bill and provided written testimony #26862.

10:43 AM Carol Two Eagles spoke in favor of the bill.

10:45 AM Kyle Rittenhouse testified in favor of the bill. #26819

10:55 AM Wade Enget, Mountrail County State's Attorney, testified opposed. #26883

11:05 AM Jonathan Beyers, Lobbyist, North Dakota State's Attorney's Association, testified opposed. #26884

11:13 AM Chase Lingle, Assistant State's Attorney, Morton County, testified opposed. #26775

11:18 AM Jeremy Ensrud, Assistant Attorney General, North Dakota Attorney General's Office, spoke opposed to the bill.

11:27 Steve Fischer, Defense Attorney, spoke opposed to the bill.

11:34 AM Razanna Larson, Ward County State's Attorney, testified opposed. #26652

13 PM Josh Traiser, Cass County Assistant State's Attorney, testified opposed. #26778

**Additional written testimony:**

Robert Vallie #26823

11:46 AM Chairman Larson closed the public hearing.

*Rick Schuchard, Committee Clerk*



# 2023 SENATE STANDING COMMITTEE MINUTES

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

HB 1213  
4/3/2023

A bill relating to reimbursement for a finding of self-defense when charged with a crime of violence; and to provide for application.
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11:00 AM Chairman Larson opened the meeting.

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

### Discussion Topics:

- Committee action
- Guilty pleas
- Attorney fees
- Court costs

11:01 AM Committee has discussion.

11:09 AM Representative Prichard spoke to amendments #27231, 27232.

11:33 AM Senator Braunberger moved to Do Not Pass the bill. Motion was seconded by Senator Sickler.

11:35 AM Roll call vote is taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	N
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	N
Senator Larry Luick	N
Senator Janne Myrdal	Y

Motion passes 4-3-0.

Senator Myrdal will carry the bill.

This bill does not affect workforce development.

11:37 AM Chairman Larson closed the meeting.

*Rick Schuchard, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**HB 1213, as engrossed: Judiciary Committee (Sen. Larson, Chairman)** recommends **DO NOT PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1213 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

**TESTIMONY**

**HB 1213**

Rep. Nico Rios  
January 17, 2023  
House Judiciary Committee  
Introduction to HB 1213

Mr. Chairman and Members of the House Judiciary Committee,

I am Representative Nico Rios of District 23 located in NW Williston. I am here to introduce House Bill 1213 and speak in support of passage of this bill.

Way too often have we seen politically motivated prosecutors bring charges against individuals over clear instances of self defense. These prosecutors, who I believe to be anti second amendment and therefore anti self defense, choose to ignore clear evidence of self defense and do not seek to pursue any sort of justice but instead are solely after political gain.

Even if the trial ends up in acquittal the prosecutor gains political notoriety in their political circles for their anti second amendment and anti self defense stance taken in these politically charged cases. The innocent defendant also ends up losing in a variety of ways. These cases can last months and even years. The innocent have to sacrifice so much during these trials. This can often cause the loss of jobs, marriage, businesses, homes and most importantly a good reputation from extreme media scrutiny.

The purpose of House Bill 1213 is to prevent this from ever happening here in North Dakota. If a prosecutor wants to bring charges of murder or attempted murder when there is a possibility of self defense, House Bill 1213 will motivate the prosecutor to make sure he has a very good case.

House Bill 1213 will create and enact a new section to chapter 12.1-5 to North Dakota Century Code, relating to reimbursement for a finding of self defense when charged with a crime of violence.

House Bill 1213 states that if an individual is found not guilty in justification of self defense. Then the state shall reimburse the defendant of all reasonable costs incurred in defense, including loss of wages and time, attorney fees, and other expenses involved in the defense.

I believe House Bill 1213 is a great step in the right direction in protecting North Dakotans rights to self defense.

I ask the members of the House Judiciary committee here to please consider supporting House Bill 1213.

Thank you.

**OFFICE OF THE  
MOUNTRAIL COUNTY STATE'S ATTORNEY**

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To: House Judiciary Committee  
Hon. Chairman Klemin  
Hon. Vice-Chair Karlse  
Members of the Committee

From: Wade G. Enget, Mountrail County State's Attorney

Re: HB 1213

Chairman Klemin, Vice-Chair Karls, Members of the House Judiciary Committee:

I am submitting this testimony in OPPOSITION to HB 1213.

Committee Members, I have several concerns with this Bill as written that have prompted me to request a DO NOT PASS.. I will summarize the reasons for my opposition :

- 1) I looked at the fiscal note attached to the Bill, and note the following on Subsection 4 of the fiscal note:

“The fiscal impact cannot be determined. The source of funding for the reimbursement awarded is not specified in the bill. Generally, if a county official or prosecutor was responsible for the harm, the county would be responsible for the damages. The “state” as an entity has no input over those decisions.”

This would appear to be a unfunded mandate upon all counties, as there is not a mechanism put forth within the language of the Bill to have the State pay for potential damages, so the potential cost would fall totally upon the Counties.

- 2) I don't think that NDIRF (county's insurance carrier) would cover the potential damages imposed, as they would want the ability to have a seat at the table and be represented prior to any damages being awarded;
- 3) Who is the “trier of fact” referred to in this Bill...the jury that just found the defendant “NOT GUILTY”, the judge in that same trial, or a separate judge or jury?

- 4) In criminal cases that are tried a jury, the jury is not asked to answer a question as to why they found the defendant "NOT GUILTY". If this is passed, it appears that this Bill would require that the jury make a finding that they are finding the defendant "NOT GUILTY" due to justification of self-defense. In almost all cases, the jury returns a verdict of simply guilty or not guilty. The only time other questions are asked of the jury is when they first find the defendant "GUILTY", with the additional findings required of the jury involving: whether a firearm was used, whether the defendant possessed/sold drugs within X amount of feet from a school, etc.
- 5) The potential for the imposition of all these costs against the county could be a real problem and will have be contemplated prior to us charging out domestic violence cases, assaults, kidnapping, felonious restraint, negligent homicide, manslaughter and murder cases.

Thank you for your time, and again I would request a DO NOT PASS recommendation from this Committee on HB 1213.

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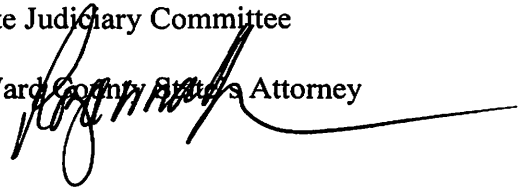
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March 24, 2023

To: Senate Judiciary Committee  
Hon. Chairman Larson  
Hon. Vice-Chair Paulson  
Members of the Senate Judiciary Committee

From: Rozanna C Larson, Ward County State's Attorney



RE: HB 1213

I am submitting this testimony in OPPOSITION to HB 1213.

Committee members, my opposition to this bill is twofold. First is the presumption that State's Attorneys in North Dakota bring charges based upon political motivation, not evidence. Secondly the chilling effect this bill could have on charging decisions, which potentially puts prosecutors in the position of being judge and jury.

Political motivation not in North Dakota

Last year in Ward County we had over 1,000 count felony arrests and nearly 2,000 count misdemeanor arrests. In 2022 we had 797 trials were scheduled. (stack trial schedule, so this includes cases that get rescheduled). My point in telling you this, is prosecutors in this state don't have time, or motivation to bring malicious cases. We don't look for the caseload it comes to us.

There are 53 counties in this State. Of those counties, 37 counties, have what is classified as "part-time" State's Attorneys, meaning they have a private practice on the side, or at least can have a private practice. Some counties share State's Attorneys so that they are "full-time" prosecutors. Such as McLean and Sheridan share Mr. Erickson; Trail and Steel Counties share Mr. Stock; Josh Frey is the State's Attorney for both McHenry and Towner Counties. Currently, there are at least six open assistant state's attorney positions, two in my office that have not been filled in over a year, the Attorney General has 3 open prosecutor positions and one HIDTA position open, and I know of one city attorney prosecutor position that is open. My point is this committee has not been given one single example of a politically motivated prosecutor. The fact is most of the State's Attorneys in this

state, save the bigger counties, are the State's Attorneys because they are the only attorney in that county that would take the job, it's not based upon being politically motivated.

As prosecutors, we have qualified immunity. Meaning that if we are acting within the scope of our jobs, including the Rules of Professional Conduct, we are protected from being sued individually or personally. That does not mean that an individual can't try to sue the County or file a claim against the County. It also does not mean that an individual can't file a disciplinary complaint with the State Bar Association. In addition to all the Rules of Professional Conduct, Rule 3.8 of the Rules of Professional Conduct is specific to prosecutors. The very first line in that rule is "the prosecutor in a criminal case shall: (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause. (emphasis added). Probable cause is what is necessary for a charge to be brought. Meaning 1) a crime was probably committed and 2) the defendant was the person that probably committed the crime. That is not a high standard, but is more than a "mere hunch." At trial, the State has to prove all the elements beyond a reasonable doubt, the highest standard of proof in the legal system. When a person asserts self-defense, the State must prove the "lack of self-defense" beyond a reasonable doubt. If a prosecutor violates Rule 3.8 they risk disciplinary action, which could include losing their license to practice law. In addition, if a prosecutor is acting outside the scope of their duties, they could be held personally liable, and defendants have recourse by filing a 1983 action in either State or Federal Court. 1983 actions can be specifically brought to compensate the victims and punish the malicious prosecutor. 1983 provides the remedy for malicious prosecution, but it also provides due process, evidence, and a right to a jury trial for the accused. It requires the defendant to prove the malicious prosecution, not just make the bare allegation and receive compensation, as this bill allows. HB 1213 presumes a "not-guilty" verdict is "due to the justification of self-defense, without showing anything more, such as malicious prosecution. HB 1213 takes away qualified immunity and allows for damages without any further proof. No due process.

### The chilling effect of charging and becoming judge and jury

Self-defense, I was told one of the reasons HB 1213 is needed is because the North Dakota Legislature did not pass the Castle Doctrines. We know that isn't true. In fact, the Legislature has amended self-defense, defense of others, and defense of property statutes in both the 2019 and the 2021 sessions. As part of that legislature also amended the limits on the use of force, and use of deadly force and provided for immunity from civil liability for justifiable use of force. The Legislature has provided its citizens the right to stand their ground.

The proponent of HB 1213 focuses only on 2<sup>nd</sup> amendment rights and accuses State's Attorneys in this state of being anti-gun. The proponent's testimony is short-sighted and only focused on one form of self-defense. HB 1213 however is not that narrow. HB 1213 is all-encompassing for all the self-defense defenses.

Self-defense can be raised in all types of cases, not just cases where a firearm was used. Cases such as disorderly conduct, bar fights, all levels of assault, domestic violence, homicide and maybe even reckless endangerment. Not every person that asserts self-defense, is defending themselves with a firearm. Some, if not most may be defending themselves through hitting, kicking, or other physical contact including strangulation holds. Or there may be the use of a different type of weapon, such as a knife, bottle, or any other object that can be used at the time to protect themselves or others.

So when a prosecutor brings a charge wherein self-defense may be raised the issue then becomes, is the defense appropriate. Under the current law, you can't claim self-defense if you intentionally provoke unlawful actions of another or you enter into mutual combat or the initial aggressor unless



you are resisting force which is clearly excessive in the circumstances. \*This analysis is made only when the arresting officer and/or the prosecutor know there may be a claim\*

If it is determined there may be a self-defense claim the issue becomes the amount of force used necessary and appropriate under the circumstances. This is where HB 1213 is making the prosecutor become a judge and jury.

Examples – officers called to a domestic violence report. The officers see a person with obvious facial injuries, the person has no visible injuries. They talk to the parties involved. The injured person admits to pushing the other person. This person then punches the person back in the face causing facial injuries. Under North Dakota law, law enforcement is mandated to make arrests if they see injuries and determine whether the parties are family or household members. If HB 1213 is passed, it puts the officers in the position of having to determine if the amount of force was necessary and appropriate. That defeats the legislature's intent for mandatory arrest in domestic violence situations. It also puts law enforcement in place of the jury, making factual determinations. This is the case in a lot of domestic situations, or we find out at trial, the victim was the "initial aggressor."

When a person is arrested on a violent offense, there are safeguards and due process up to and during a jury trial. Referring back to Rule 3.8 there must be probable cause. Law Enforcement must have probable cause to make an arrest. Prosecutors must have probable cause to file the charges. The Court reviews the affidavits of probable cause, and for felony offenses, there are preliminary hearings for the Court to find probable cause. Determining whether the amount of force used was necessary and appropriate should be a jury determination, not law enforcement, not the prosecutor.

In one murder case we had several years ago, the defendant asserted self-defense. Our defendant had burglarized a home. Knowing the victim of the burglary and his friends would come looking for him, he sat in his house with a firearm next to him. The burglary victim and his friends do come to his residence, they force their way into his home. It is not at that time that the defendant shot at the intruders. There are words exchanged, the burglary victim and his friends left the residence. After they have left his home, the defendant shot multiple rounds out the window of his residence. The victim was shot four times in the back as he was running away. When does the claim of self-defense end? Now is that a case where as prosecutors we tell a family we can't try to get justice because there's going to be a self-defense claim or do we try to get justice and let the jury decide if there was self-defense and if the amount of force was necessary and appropriate? How would we balance persons right to defend themselves, others, or property, against the victims' Marcy's law rights? The jury acquitted the defendant.

I can also give you an example of a stand-your-ground case, wherein the person protected himself by discharging his firearm. Our victim and the defendant were outside on the street in front of an after-hours club. There were at least thirty people in the area. Our victim walked up to the defendant, at which time the defendant, with a gun in his hand, struck the victim in the face with the gun. A nearby security video showed our victim falling backward, and ultimately discharging a firearm at the defendant. The defendant then discharged his firearm at the victim. A bystander was struck in the foot with a bullet. Neither of the parties involved was charged with an offense as it related to the discharging of their firearms. Why, because the victim had a right to protect himself, and the threat of imminent bodily injury was real. The defendant, after being shot at, had a right also to protect himself. Now I used the term defendant in this scenario, because, there he did assault the victim first, he was charged for that assault. This is a case, where, self-defense was obvious, even in regard to a reckless endangerment offense, putting all the bystanders at risk of serious bodily injury or death.

I caution you also, in that this bill could open the door to other offenses and reparations. Could potentially open the door to other offenses that get dismissed, or the defendant's acquitted, without any finding that their charges were not warranted or that there wasn't probable cause. It would have a long-term chilling effect on prosecution, which in turn directly affect public safety.

OFFICE OF THE  
MORTON COUNTY STATE’S ATTORNEY

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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.

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Testimony on House Bill 1213

Prepared for the North Dakota Senate Judiciary Committee

Josh Traiser, Cass County Assistant State's Attorney

March 26, 2023

Chair Larson and Members of the Senate Judiciary Committee,

My name is Josh Traiser. I am a prosecutor in Cass County. I grew up in North Dakota and have lived and worked here for the bulk of my life. I now reside in North Fargo with my family. I'm writing in **OPPOSITION** to House Bill 1213 because I'm concerned with the potential costs of this bill, structural issues of fairness and process, and because of the chilling effect it could have on domestic violence prosecutions. These consequences are not outweighed by the purported benefit of the bill.

House Bill 1213 charges the taxpayers of North Dakota with reimbursing acquitted defendants "for all reasonable costs incurred in defense, including loss of wages and time, attorney fees, and other expenses involved in the defense" if ordered by the Court. The Bill does not set forth a funding stream for meeting these costs should they be imposed. Given the fact that fees for expert witnesses, billable hours for attorney teams, and "other expenses" can run into the hundreds of thousands of dollars, this Bill creates a significant liability but imposes no tax to pay the costs. Rather, these expenses will, presumably, be passed on directly to the taxpayer in the form of an income tax or property tax. It seems unfair for taxpayers to foot these potentially exorbitant bills when they have very little to do with the case.

It is similarly unfair to impose the costs of a defense on a Statewide basis. If a prosecution in Cass County fails and a jury comprised of Cass County residents imposes the costs of a defense, it seems unfair to push that bill upon the people of Burleigh County, who neither elected the Cass County State's Attorney, nor played any role in the deciding of the case. Criminal prosecutions are intensely local and prosecutors are elected on a local level. As the law stands, if an acquitted Defendant has a cause of action for a malicious prosecution, it is the local jurisdiction which can ultimately be held liable. This Bill unnecessarily imposes Statewide obligations upon taxpayers.

There are several significant vetting mechanisms for unwise prosecutions written into the law already. First, law enforcement's reports are vetted by a prosecutor who must weigh the evidence before filing charges. Second, if the prosecutor has decided to file charges, a warrant may be issued only if a Judge believes that probable cause supports an arrest. Third, if a warrant is issued and a felony offense is charged, a Defendant may elect

to contest probable cause at a preliminary hearing. At this hearing, the Defendant may put on witnesses and argue facts to the Judge, who is screening the case for probable cause. Fourth, if probable cause is found and a case proceeds to trial, the Trial Judge has the ability to acquit a Defendant at the conclusion of the State's case under Rule 29 of the North Dakota Rules of Criminal Procedure before the case is given to the jury. Fifth and finally, while the Defendant may have their bond reviewed at any time during the pendency of the case. One of the enumerated bail factors to be considered by the Judge under Rule 46 of the North Dakota Rules of Criminal Procedure is the weight of the evidence. Because there are multiple layers of review built into our law already, it is unlikely that a Defendant would need or succeed on a claim under the Bill, unless that Defendant happened to be tried in front of a renegade jury.

By converting self-defense from a shield to a sword, the Bill places claimant Defendants in an unusual and unjust position. Self-defense in North Dakota is a defense, *not* an affirmative defense. This is a significant distinction because in North Dakota a Defendant need only provide very limited notice and virtually no discovery in their criminal proceeding. This makes sense in the context of a criminal case wherein the State is the moving party, but it doesn't make sense in a civil context wherein a Plaintiff is seeking damages. Normally, when one party is suing another civilly, both parties are entitled to discovery, depositions, and various procedural tools to pursue their claims. As written, a Defendant may seek damages immediately post-trial when the State has not had an opportunity to meet and depose defense witnesses, interview a Defendant, or formulate a case strategy designed for civil court. Moreover, if the Court or jury imposes damages in error, it's not clear that the State would be entitled to appellate review of the scope or basis for that determination.

This Bill may discourage prosecutors from filing charges in domestic violence cases. Domestic violence is pervasive in our community and domestic violence charges constitute a large percentage of the prosecutions in any given jurisdiction. In these cases, the cycle of domestic violence is a reoccurring problem and results in difficult prosecutions. In such cases, victims may recant their initial statements to officers or attempt to explain away or deny obvious physical injury. Often times these recantations are the product of manipulation by the domestic violence offender. Given the spectre of a monetary judgment against the State, it is possible that some prosecutors will refrain from filing charges in such cases if they expect that a victim may recant on the witness stand.

Given the significant liability created by this Bill and its numerous costs, one would assume that there is a large and pressing problem which this Bill is intended to fix. A review of the record shows that this is not the case. As of March 26, 2023, I can see only one piece of written testimony in favor of the Bill, which was penned by the Bill's prime sponsor. In this testimony, the prime sponsor remarks that "way too often" we see



“politically motivated prosecutors bring[ing] charges against individuals over clear instances of self defense.” This has not been my experience. Over the years, our Legislature has expanded the law of self-defense in our State. As a result, I have personally declined many cases in which I do not believe that I can prove, beyond a reasonable doubt, that a suspect was not acting in self-defense. In many of these cases, my decision not to file charges has upset victims and members of law enforcement. In the few cases of which I’m familiar wherein a Defendant is acquitted on a theory of self-defense, there is no benefit to the prosecutor who lost the case. Rather, there is scrutiny from law enforcement and members of the public, who may or may not be familiar with the facts of the case. This Bill is a solution in search of a problem as each and every local prosecutor’s office is directly politically accountable for each, and every decision they make.

Madam Chair and members of the Senate Judiciary Committee, I urge a **DO NOT PASS** recommendation to House Bill 1213. Thank you for your time and consideration to my testimony.



Josh Traiser  
Cass County Assistant State’s Attorney

## Thank you Madame Chair

My name is Kyle Rittenhouse.

Many of you may be aware of the situation that occurred on August 25th, 2020 - when, as a 17-year-old, I was forced to defend my life and as a result, became thrust into a media frenzy and legal battle, I could have never prepared for.

We were all impacted by the events taking place on the world stage in 2020 ... but allow me to remind you of what took place in the media and communities the months preceding the event that changed my life forever.

As the entire world was being immersed in the uncertainty, turmoil, and fear of the pandemic - Americans were beginning to pivot and react to the effects the new Covid restrictions was having on our way of doing life, our jobs, incomes, businesses, and families. Simultaneously, the media was cultivating more and more anti-gun press. In March we witnessed the protests after the Breonna Taylor incident in Louisville, KY. In May, rioting and violence broke out in communities all around the nation because of the George Floyd incident. So, when a police incident happened in my hometown of Kenosha Wisconsin involving police officers shooting Jacob Blake, a young black man in the back *7 times*, our normally quiet community quickly erupted into chaos, violence, and riots.

To protect a friend's livelihood and used car inventory, I was asked to come in and help guard the parking lot with Mr. Black and Mr Smith

As I was protecting this dealership as well as neighboring businesses by putting out fires and providing first aid to those in harm's way, I was viciously attacked.

I testified in court - Mr. Rosenbaum was the first person to approach, threaten and attack me that night. He had been taunting, provoking, and yelling things such as "if I catch any of you alone, I'm going to kill you". It wasn't long before he did just as I was trying to extinguish a car fire. He began to run towards me, throwing objects at me. I first attempted to de-escalate the situation, quickly realizing it was futile and fled. Mr. Rosenbaum pursued me and once he realized I was cornered and had nowhere to run - he confronted me and attempted to steal my gun. It was at this point that I was forced to defend myself.

This is when the rest of the mob turned their attention to me, so I began running towards the police line at the edge of the rioting. As I ran for my life - People from the mob were screaming things like "Get him" "kill him" "cranium that boy". It all happened so fast but as I ran towards help, I was

approached by Mr. Grosskreutz who asked, "where are you going" to which I replied, "to the police". I was struck in the head from behind with a skateboard by Mr. Huber. Another man who was wearing a white tank top hit me in the back of the head with an unidentified object causing me to stumble and hit the ground.

Once on the ground - I was immediately kicked in the face by a guy, referred to during the trial as a jump kick man. To defend myself from his assault, I was able to fire 2 shots off, missing him. Mr. Huber continued to repeatedly strike me in the head with the skateboard while attempting to pull my gun away from me. I was again forced to defend myself against his assault.

After gathering myself, I continued in the direction of the police and was again confronted by Mr. Grosskreutz. This time he was brandishing a pistol. In defense, I pointed my gun at him. He put his hands up while still holding the pistol in his hand. As I lowered my gun, Mr. Grosskreutz lunged toward me, dropping his hands, and aiming his pistol directly at my head. I was forced to defend myself for a third time.

After being assaulted and defending my life multiple times, I was finally able to reach the police line. I approached an officer in a police car with my hands up to convey I was not a threat. I attempted to tell him what had just taken place but was immediately told to get away from the car, out of the riot area, and go home.

After arriving home, I told my family what had happened and went to the police station to disclose the situation, to do what I believed was the right thing to do. I was immediately arrested and charged before any questioning took place, evidence was collected, or additional information was made available.

Because of the events that had taken place in the months before this incident, the media jumped at the opportunity to push their anti-gun message and therefore, my case was immediately thrust into the public eye. As a result of the media exposure, thousands were made aware of my situation and I received support from people who saw the situation for what it was, (An attempt to take away our nation's 2nd amendment rights). People came to my aid in many ways including financially donating to my legal defense fund.

I realize that not everyone has the opportunity to receive this kind of support and I feel extremely blessed. Most people who are forced to defend themselves or their loved ones' lives from a violent situation - often end up losing their jobs, homes and livelihoods just trying to further defend themselves through the court process.

For me personally, this entire process often felt like being thrown into a nightmare I couldn't wake up from and has impacted every aspect of my life – including my decision to relocate from Wisconsin to Texas.

HOUSE BILL 1213 was created to protect the innocent lives of those who are forced to defend themselves during a violent situation, at no choice or fault of their own.

The intent behind what is being referred to or known in other states as "KYLE'S LAW" is to prevent the acquitted from losing everything they have worked their entire life for. It would also allow their life to be restored as much as possible. It is hoped that the courts will pause before reacting – now knowing the courts and their legal representatives are putting the state in a position of Financial Responsibility for reparations if due diligence isn't taken and innocents are wrongly charged.

I believe that if this bill had been in effect on August 25th, 2020 – my story might be very different. The Officers or District Attorney might have paused to gather the facts before charging me without having probable cause, evidence, and all the facts first. Just that moment to pause and act with due diligence could have avoided the lengthy legal situation that their actions set into play. However, without accountability, the courts are allowed to thoughtlessly impact the lives of your citizens without recourse or consideration.

Madame chair and Distinguished committee members.

It is my mission to use my experience and story to speak on behalf of our God-Given rights to self-defense, and fair representation.

I believe you have a tremendous opportunity before you, *to right the ship* if you will. - with a vote in FAVOR of HB 1213. This law will identify a "checks and balance of fairness, Justice and power" on behalf of North Dakota citizens who would otherwise end up as collateral damage in the wake of a court system that has grown numb and desensitized to the ramifications of its actions. Citizens who otherwise would have no voice without your support.

I ask you to consider supporting HB 1213 as a defender of our God - Given Rights to keep and bear arms as defined by the Bill of Rights in the 2nd Amendment of our Constitution.

Rights belonging to YOU, your loved ones, and every citizen in the great state of North Dakota.

Thank you for your time and your support of this critical piece of legislation by voting in favor of HOUSE BILL 1213

**Robert Vallie-Assistant State's Attorney  
Cass County State's Attorney's Office  
Testimony Concerning House Bill 1213  
March 27, 2023**

Madam Chair 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 stand in opposition to the passage of House Bill 1213, which would provide within Century Code an ability for a defendant to be reimbursed by the State, when found not guilty, due to a justification of self-defense.

The first item to address is what problem does this Bill solve? In review of both the written and oral testimony provided by the prime sponsor in the House Judiciary Committee hearing on January 17, 2023, a number of reasons are given as to this Bill being introduced. Those reasons include to stop politically motivated prosecutors from bringing charges against defendants in clear instances of self-defense and to act as a middle ground to protect self defense rights due to the Legislative Assembly failing to pass a stand your ground bill in 2021. While the prime sponsor alludes to this idea of prosecutors using the criminal justice system to score political points or notoriety at the expense of defendant's life and liberty, he fails to give single example of a case in which this has occurred. When questioned by Representative Karls, the prime sponsor acknowledged that he was unable to find an example within North Dakota, where this Bill would have been able to correct such a wrong. At the time of this testimony, no such example, whether in state or out of state has been provided to judge the merits of this Bill. Additionally, when questioned by Representative Roers-Jones, the prime sponsor was corrected that the Legislative Assembly had indeed passed House Bill 1498 during the 2021 Legislative Session concerning self-defense. If no example can be pointed to show such a problem exists and this legislation was proposed based on a misunderstanding of laws passed last session, I believe such a drastic change in public policy is unnecessary.

In review of the Bill itself, there are a number of concerns that become immediately apparent. While the prime sponsor and Lines 9 and 10 of this Bill, indicate crimes such as Assault and Murder are the crimes to be addressed, this Bill covers much more than those crimes. Lines 8 and 9 of the Bill lists "crime of violence" as "a violation of state law in which "an individual causes death or physical bodily injury to another individual." Bodily injury and is encompassed in a number of crimes with Century Code. These include Simple Assault, Simple Assault-Domestic Violence, Assault, Aggravated Assault, Simple Assault on a Peace Officer and Reckless Endangerment, among others. Death is incorporated in crimes, such as Manslaughter, Negligent Homicide and Murder. While some of the crimes listed may be of no surprise to claim self-defense, I believe this bill would provide unintended consequences. Specifically, to allow claims of self defense against law enforcement officers who are assaulted in the line of duty and placing greater difficulties on prosecutions to crimes like Domestic Violence.

Additionally, I believe this proposal fails to appreciate as to the financial implications on our

political subdivisions. HB 1213 reads that a court may order the state to reimburse a defendant for costs for their defense. While one may read this Bill to believe the State of North Dakota to be on the hook for that reimbursement, it is not that simple. The various State's Attorney's Offices across the state, act on behalf of the State of North Dakota in criminal matters, just as it acts on behalf of the state in civil commitments and certain child support enforcement. Given this Bill does not provide for a state funding source to address such reimbursements, I believe this financial obligation would ultimately fall on our counties to pay.

Madam Chair and members of the Committee, while there are additional concerns with this legislation, I will limit my comments to the above and encourage you to review the written testimony of my colleagues. Each of State's Attorneys and Assistant State's Attorney's who have provided testimony, bring their own unique perspective to this debate. Each with years of experience in this field and each public servants working to ensure Justice is achieved. I believe the details they provide would be valuable in your review of this legislation.

Madam Chair and members of the Committee, thank you for the opportunity to provide testimony to this important issue. I urge a Do Not Pass Recommendation and happy to address any questions you may have as you deliberate this matter.

Robert Vallie  
Assistant State's Attorney  
Cass County State's Attorney's Office  
211 9th St. S.  
Fargo, ND 58103

Representative Nico Rios  
March 28<sup>th</sup>, 2023  
Senate Judiciary Committee  
Introduction to House Bill 1213

Madam Chair and Members of the Senate Judiciary Committee

My name is Nico Rios and I am the representative out of District 23 which is located on the Northwest Side of Williston in Williams County. I'm here to introduce House Bill 1213.

House Bill 1213 states that if an individual charged with a crime of violence is found not guilty due to the justification of self-defense, the court may order the state to reimburse the defendant for all reasonable costs incurred in defense, including loss of wages and time, attorney's fees, and other expenses involved in the defense.

There have been many unfortunate cases we have seen where individuals were taken to trial for murder or attempted murder over clear instances of self defense.

Even if the trial ends up in acquittal the innocent defendant may end up losing in a variety of ways. These cases can last months and even years. This can often cause the loss of jobs, marriage, businesses, homes and most importantly a good reputation from media scrutiny.

For instance, I don't believe the woman who has been a victim of domestic abuse for years and finally decides to buy a gun for self defense should have to worry about going bankrupt, or worse, going to prison for defending her life and the lives of her children.

How many of us here have a gun for self defense at home? Or in our car? Or even like to carry a firearm? I'm sure a lot of us in here do some of these things. We all hope and pray we never have to use a gun for self defense. But if we ever do, it is reassuring knowing if we are tried when it is clearly self defense, the court has the ability and the option to help correct the situation.

I believe House Bill 1213 is a great step in the right direction in protecting North Dakotans right to self defense and urge a do pass recommendation.

OFFICE OF THE  
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To: **Hon. Chairman Larson**  
**Hon. Vice-Chair Paulson**  
**Members of the Senate Judiciary Committee**

From: **Wade G. Enget, Mountrail County State's Attorney**

Re: **HB 1213**

Committee Members, I am submitting this testimony in OPPOSITION to HB 1213, as I have several concerns with HB 1213 as written. I will summarize the reasons for my opposition:

- 1) The expressed premise of HB 1213 is: "Way too often have we seen politically motivated prosecutors bring charges against individuals over clear instances of self defense." A second stated premise by Representative Rios is: "These prosecutors, who I believe to an anti second amendment and therefore anti self defense, chose to ignore clear evidence of self defense and do not seek to pursue any sort of justice but instead are solely for political gain." Yet, there has not been provided to this Committee even one example of politically motivated prosecutions, or of an example of a prosecutor who is anti-2nd Amendment.
- 2) If HB 1213 is passed, there are no provisions within HB1213 that require a jury to make a finding of self-defense. In almost all cases, the jury returns a verdict of simply guilty or not guilty. The only time the jury is required to make additional findings is when specific statutory limitation are included in the essential elements or penalty section, which include criminal cases involving: whether a firearm was used, whether the defendant possessed/sold drugs within X amount of feet from a school, the weight of the illegal drugs, etc. HB 1213 is lacking of a mechanism to make sure that the jury or judge specifically makes a finding that their verdict was based upon self-defense.
- 3) HB 1213 does not require that a jury impaneled in a criminal cases make special findings as to why they found the defendant "NOT GUILTY". The sponsor testified before the House Judiciary Committee that this proposed legislation was similar to existing laws in the State of Washington and the State of Kentucky.

In the State of Washington, the statute explicitly requires a special findings by the jury of self-defense. Further, the statute requires a special finding as to whether the defendant "engaged in criminal conduct sustantially related to the events giving rise to the crime with which the defendant is charged." If that finding is answered in the affirmative, then the judge may "deny or reduce the amount of the award."

In the State of Kentucky, self-defense is an affirmative defense, for which the defendant has the burden of proof. Further, any reimbursement is allowed by way of a civil action.



I have attached the provisions of the existing law in the State of Washington (**Exhibit "A"**) and the State of Kentucky (**Exhibit "B"**). Please take the time to review the differences that both the Washington and Kentucky versus the provisions of HB 1213.

4) How would HB 1213 interact with the provisions of Article I, Section 25 of the North Dakota Constitution, otherwise referred to a "Marsy's Law". The citizens of North Dakota, when the adopted this Constitutional amendment, have instituted a constitutional obligation to "preserve and protect the right of crime victims to justice" upon prosecutors and other members of the criminal justice system. I have attached a copy of Article I, Section 25 of the North Dakota Constitution to my testimony as **Exhibit #C**.

5) I looked at the fiscal note attached to the Bill, and note the following on Subsection 4 of the fiscal note:

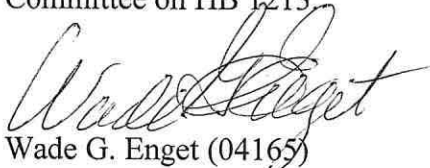
"The fiscal impact cannot be determined. The source of funding for the reimbursement awarded is not specified in the bill. Generally, if a county official or prosecutor was responsible for the harm, the county would be responsible for the damages. The "state" as an entity has no input over those decisions."

This would appear to be a unfunded mandate upon all counties, as there is not a mechanism put forth within the language of the Bill to have the State pay for potential damages, so the potential cost would fall totally upon the county.

6) There is serious concern as to whether the North Dakota Insurance Reserve Fund (NDIRF), which is the insurance carrier for a vast majority of the counties in North Dakota, would cover any potential damages imposed. The insurance contract that the County has with NDIRF requires that the County notify NDIRF when the potential cause of action accrues. NDIRF makes that a part of its contract, as they want the ability to have a seat at the table and be represented prior to any damages being awarded. HB 1213 does not allow that to happen in its present form. As such, there is a real possibility that the County would not have insurance coverage for these potential claims.

7) The potential for the imposition of all these costs against the county could be a real problem and will have be contemplated prior to prosecutors charging out crimes involving domestic violence, assaults, kidnapping, felonious restraint, negligent homicide, manslaughter and murder.

Thank you for your time, and again I would request a **DO NOT PASS** recommendation from this Committee on HB 1213.



Wade G. Enget (04165)  
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**RCW 9A.16.110 Defending against violent crime—Reimbursement.**

(1) No person in the state shall be placed in legal jeopardy of any kind whatsoever for protecting by any reasonable means necessary, himself or herself, his or her family, or his or her real or personal property, or for coming to the aid of another who is in imminent danger of or the victim of assault, robbery, kidnapping, arson, burglary, rape, murder, or any other violent crime as defined in RCW 9.94A.030.

(2) When a person charged with a crime listed in subsection (1) of this section is found not guilty by reason of self-defense, the state of Washington shall reimburse the defendant for all reasonable costs, including loss of time, legal fees incurred, and other expenses involved in his or her defense. This reimbursement is not an independent cause of action. To award these reasonable costs the trier of fact must find that the defendant's claim of self-defense was sustained by a preponderance of the evidence. If the trier of fact makes a determination of self-defense, the judge shall determine the amount of the award.

(3) Notwithstanding a finding that a defendant's actions were justified by self-defense, if the trier of fact also determines that the defendant was engaged in criminal conduct substantially related to the events giving rise to the charges filed against the defendant the judge may deny or reduce the amount of the award. In determining the amount of the award, the judge shall also consider the seriousness of the initial criminal conduct.

Nothing in this section precludes the legislature from using the sundry claims process to grant an award where none was granted under this section or to grant a higher award than one granted under this section.

(4) Whenever the issue of self-defense under this section is decided by a judge, the judge shall consider the same questions as must be answered in the special verdict under subsection (4) [(5)] of this section.

(5) Whenever the issue of self-defense under this section has been submitted to a jury, and the jury has found the defendant not guilty, the court shall instruct the jury to return a special verdict in substantially the following form:

- |  | answer<br>yes or no |
|--|---------------------|
| 1. Was the finding of not guilty based upon self-defense?  | .....               |
| 2. If your answer to question 1 is no, do not answer the remaining question.   |                     |
| 3. If your answer to question 1 is yes, was the defendant:   |                     |
| a. Protecting himself or herself?  | .....               |
| b. Protecting his or her family?   | .....               |
| c. Protecting his or her property?   | .....               |
| d. Coming to the aid of another who was in imminent danger of a heinous crime?   | .....               |
| e. Coming to the aid of another who was the victim of a heinous crime?   | .....               |
| f. Engaged in criminal conduct substantially related to the events giving rise to the crime with which the defendant is charged? | .....               |

Exhibit 'A'

[1995 c 44 § 1; 1989 c 94 § 1; 1977 ex.s. c 206 § 8. Formerly RCW 9.01.200.]

**Use of deadly force—Legislative recognition:** See note following RCW 9A.16.040.

Baldwin's Kentucky Revised Statutes Annotated  
Title L. Kentucky Penal Code  
Chapter 503. General Principles of Justification (Refs & Annos)

KRS § 503.085

503.085 Justification and criminal and civil immunity for use of permitted force; exceptions

Effective: July 12, 2006

Currentness

- (1) A person who uses force as permitted in KRS 503.050, 503.055, 503.070, and 503.080 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom the force was used is a peace officer, as defined in KRS 446.010, who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law, or the person using force knew or reasonably should have known that the person was a peace officer. As used in this subsection, the term "criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant.
- (2) A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (1) of this section, but the agency may not arrest the person for using force unless it determines that there is probable cause that the force that was used was unlawful.
- (3) The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff, if the court finds that the defendant is immune from prosecution as provided in subsection (1) of this section.

**Credits**

HISTORY: 2006 c 192, § 6, eff. 7-12-06

**Editors' Notes**

**Relevant Additional Resources**

Additional Resources listed below contain your search terms.

**RESEARCH REFERENCES**

**Treatises and Practice Aids**

Kentucky Practice, Substantive Criminal Law § 5:22, **Self-Defense--Generally.**

**Relevant Notes of Decisions (30)**

View all 52

Notes of Decisions listed below contain your search terms.

Baldwin's Kentucky Revised Statutes Annotated  
Title L. Kentucky Penal Code  
Chapter 503. General Principles of Justification (Refs & Annos)

KRS § 503.050

503.050 Use of physical force in self-protection; admissibility  
of evidence of prior acts of domestic violence and abuse

Effective: July 12, 2006

Currentness

- (1) The use of physical force by a defendant upon another person is justifiable when the defendant believes that such force is necessary to protect himself against the use or imminent use of unlawful physical force by the other person.
- (2) The use of deadly physical force by a defendant upon another person is justifiable under subsection (1) only when the defendant believes that such force is necessary to protect himself against death, serious physical injury, kidnapping, sexual intercourse compelled by force or threat, felony involving the use of force, or under those circumstances permitted pursuant to KRS 503.055.
- (3) Any evidence presented by the defendant to establish the existence of a prior act or acts of domestic violence and abuse as defined in KRS 403.720 by the person against whom the defendant is charged with employing physical force shall be admissible under this section.
- (4) A person does not have a duty to retreat prior to the use of deadly physical force.

**Credits**

HISTORY: 2006 c 192, § 3, eff. 7-12-06; 1992 c 173, § 2, eff. 7-14-92; 1974 c 406, § 30

**Editors' Notes**

**KENTUCKY CRIME COMMISSION/LRC COMMENTARY**

**1974:**

A person free of fault has always been privileged to defend himself against injury threatened by another. The availability of this privilege as a defense to a criminal charge is dependent under prevailing law upon a showing that: the defendant believed physical force to be necessary for self-protection against an unlawful attack; his belief was based upon reasonable grounds; the force used was believed necessary to avoid imminent danger; and the force used was not in excess of that believed necessary to repel the unlawful attack. Only one major change of direction in this doctrine is accomplished by KRS 503.050. No longer is availability of the privilege dependent upon a showing that a defendant's belief in the necessity of his action is reasonable. If an individual believes that another is using or threatening the imminent use of unlawful force, he is justified in using an amount of force believed necessary to protect himself. The fact that unlawful force is not actually being threatened, that the

Baldwin's Kentucky Revised Statutes Annotated  
Title L. Kentucky Penal Code  
Chapter 503. General Principles of Justification (Refs & Annos)

KRS § 503.055

503.055 Use of defensive force regarding dwelling, residence, or occupied vehicle; exceptions

Effective: July 12, 2006

Currentness

- (1) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if:
  - (a) The person against whom the defensive force was used was in the process of unlawfully and forcibly entering or had unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and
  - (b) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.
  
- (2) The presumption set forth in subsection (1) of this section does not apply if:
  - (a) The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person;
  - (b) The person sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the defensive force is used;
  - (c) The person who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or
  - (d) The person against whom the defensive force is used is a peace officer, as defined in KRS 446.010, who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties, and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a peace officer.
  
- (3) A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force, if he

or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a felony involving the use of force.

(4) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

**Credits**

HISTORY: 2006 c 192, § 2, eff. 7-12-06

Notes of Decisions (17)

KRS § 503.055, KY ST § 503.055

Current through laws effective Jan. 6, 2023 and the Nov. 8, 2022 election. Some sections may be more current, see credits for details.

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Baldwin's Kentucky Revised Statutes Annotated  
Title L. Kentucky Penal Code  
Chapter 503. General Principles of Justification (Refs & Annos)

KRS § 503.070

503.070 Protection of another

Effective: July 12, 2006

Currentness

(1) The use of physical force by a defendant upon another person is justifiable when:

- (a) The defendant believes that such force is necessary to protect a third person against the use or imminent use of unlawful physical force by the other person; and
- (b) Under the circumstances as the defendant believes them to be, the person whom he seeks to protect would himself have been justified under KRS 503.050 and 503.060 in using such protection.

(2) The use of deadly physical force by a defendant upon another person is justifiable when:

- (a) The defendant believes that such force is necessary to protect a third person against imminent death, serious physical injury, kidnapping, sexual intercourse compelled by force or threat, or other felony involving the use of force, or under those circumstances permitted pursuant to KRS 503.055; and
- (b) Under the circumstances as they actually exist, the person whom he seeks to protect would himself have been justified under KRS 503.050 and 503.060 in using such protection.

(3) A person does not have a duty to retreat if the person is in a place where he or she has a right to be.

**Credits**

HISTORY: 2006 c 192, § 4, eff. 7-12-06; 1974 c 406, § 32, eff. 1-1-75

**Editors' Notes**

**KENTUCKY CRIME COMMISSION/LRC COMMENTARY**

**1974:**

This provision serves to provide justification for the use of physical force in protection of others. Subsection (1) accords an individual defending another the same rights he would have in defending himself and simultaneously imposes the same limitations upon him. It should be said about subsection (1) that a defendant is justified in acting under this provision only



Baldwin's Kentucky Revised Statutes Annotated  
Title L. Kentucky Penal Code  
Chapter 503. General Principles of Justification (Refs & Annos)

KRS § 503.080

503.080 Protection of property

Effective: July 12, 2006

Currentness

- (1) The use of physical force by a defendant upon another person is justifiable when the defendant believes that such force is immediately necessary to prevent:
  - (a) The commission of criminal trespass, robbery, burglary, or other felony involving the use of force, or under those circumstances permitted pursuant to KRS 503.055, in a dwelling, building or upon real property in his possession or in the possession of another person for whose protection he acts; or
  - (b) Theft, criminal mischief, or any trespassory taking of tangible, movable property in his possession or in the possession of another person for whose protection he acts.
- (2) The use of deadly physical force by a defendant upon another person is justifiable under subsection (1) only when the defendant believes that the person against whom such force is used is:
  - (a) Attempting to dispossess him of his dwelling otherwise than under a claim of right to its possession; or
  - (b) Committing or attempting to commit a burglary, robbery, or other felony involving the use of force, or under those circumstances permitted pursuant to KRS 503.055, of such dwelling; or
  - (c) Committing or attempting to commit arson of a dwelling or other building in his possession.
- (3) A person does not have a duty to retreat if the person is in a place where he or she has a right to be.

**Credits**

HISTORY: 2006 c 192, § 5, eff. 7-12-06; 1974 c 406, § 33, eff. 1-1-75

**Editors' Notes**

**KENTUCKY CRIME COMMISSION/LRC COMMENTARY**

**1974:**

West's North Dakota Century Code Annotated  
Constitution of North Dakota  
Article I. Declaration of Rights (Refs & Annos)

NDCC Const. Art. 1, § 25

Section 25.

Currentness

1. To preserve and protect the right of crime victims to justice, to ensure crime victims a meaningful role throughout the criminal and juvenile justice systems, and to ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than the protections afforded to criminal defendants and delinquent children, all victims shall be entitled to the following rights, beginning at the time of their victimization:

- a. The right to be treated with fairness and respect for the victim's dignity.
- b. The right to be free from intimidation, harassment, and abuse.
- c. The right to be reasonably protected from the accused and any person acting on behalf of the accused.
- d. The right to have the safety and welfare of the victim and the victim's family considered when setting bail or making release decisions.
- e. The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information about the victim, and to be notified of any request for such information or records.
- f. The right to privacy, which includes the right to refuse an interview, deposition, or other discovery request made by the defendant, the defendant's attorney, or any person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interaction to which the victim consents. Nothing in this section shall abrogate a defendant's sixth amendment rights under the Constitution of the United States nor diminish the state's disclosure obligations to a defendant.
- g. The right to reasonable, accurate, and timely notice of, and to be present at, all proceedings involving the criminal or delinquent conduct, including release, plea, sentencing, adjudication, and disposition, and any proceeding during which a right of the victim is implicated.
- h. The right to be promptly notified of any release or escape of the accused.

- i. The right to be heard in any proceeding involving release, plea, sentencing, adjudication, disposition, or parole, and any proceeding during which a right of the victim is implicated.
  
- j. The right, upon request, to confer with the attorney for the government.
  
- k. The right to provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any presentence or disposition investigation or compiling any presentence investigation report or recommendation regarding, and to have any such information considered in any sentencing or disposition recommendations.
  
- l. The right, upon request, to receive a copy of any report or record relevant to the exercise of a victim's right, except for those portions made confidential by law or unless a court determines disclosure would substantially interfere with the investigation of a case, and to receive a copy of any presentence report or plan of disposition when available to the defendant or delinquent child.
  
- m. The right, upon request, to the prompt return of the victim's property when no longer needed as evidence in the case.
  
- n. The right to full and timely restitution in every case and from each offender for all losses suffered by the victim as a result of the criminal or delinquent conduct. All monies and property collected from any person who has been ordered to make restitution shall be first applied to the restitution owed to the victim before paying any amounts owed to the government.
  
- o. The right to proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related post-judgment proceedings.
  
- p. The right, upon request, to be informed of the conviction, adjudication, sentence, disposition, place, and time of incarceration, detention, or other disposition of the offender, any scheduled release date of the offender, and the release of or the escape by the offender from custody or commitment.
  
- q. The right, upon request, to be informed in a timely manner of all post-judgment processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. The parole authority shall extend the right to be heard to any person harmed by the offender.
  
- r. The right, upon request, to be informed in a timely manner of any pardon, commutation, reprieve, or expungement procedures, to provide information to the governor, the court, any pardon board, and other authority in these procedures, and to have that information considered before a decision is made, and to be notified of such decision in advance of any release of the offender.
  
- s. The right to be informed of these rights, and to be informed that victims can seek the advice of an attorney with respect to their rights. This information shall be made available to the general public and provided to all crime victims in what is referred to as a Marsy's Card.

2. The victim, the retained attorney of the victim, a lawful representative of the victim, or the attorney for the government upon request of the victim may assert and seek enforcement of the rights enumerated in this section and any other right afforded to a victim by law in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right. The court or other authority with jurisdiction shall act promptly on such a request, ensuring that no right is deprived without due process of law, and affording a remedy by due course of law for the violation of any right. The reasons for any decision regarding disposition of a victim's right shall be clearly stated on the record.

3. The granting of these rights to victims shall not be construed to deny or disparage other rights possessed by victims. All provisions of this section apply throughout criminal and juvenile justice processes and are self-enabling. This section does not create any cause of action for damages against the state, any political subdivision of the state, any officer, employee, or agent of the state or of any of its political subdivisions, or any officer or employee of the court.

4. As used in this section, a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. If a victim is deceased, incompetent, incapacitated, or a minor, the victim's spouse, parent, grandparent, child, sibling, grandchild, or guardian, and any person with a relationship to the victim that is substantially similar to a listed relationship, may also exercise these rights. The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

**Credits**

Init. Measure No. 3, § 1, approved November 8, 2016.

Notes of Decisions (24)

NDCC Const. Art. 1, § 25, ND CONST Art. 1, § 25

The constitution is current with results of the Nov. 3, 2020 general election.

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Senate Judiciary Committee

Engrossed House Bill 1213

March 22, 2023

Madame Chair, Members of the Committee

My name is Jonathan Byers and I am the lobbyist for the North Dakota States Attorney's Association. I testify in opposition to Engrossed House Bill 1213.

This bill is an example of one that has noble intentions: to prevent politically based prosecutions against those who use a gun in self-defense. Despite its good intentions, the bill is also an example of one that will have horrible unintended consequences.

North Dakota's criminal justice system is set up to provide multiple checkpoints where the State has to prove a lack of self-defense. (See attached pattern jury instruction K-3.01)

- Filing a charge
- Preliminary hearing
- Close of the State's case—Rule 29 motion for judgment of acquittal
- Jury verdict

At each of those stages, the prosecutor carries the burden to show a lack of self-defense. It makes no sense that under subsection 2 of the bill, if someone is found guilty "due to the justification of self-defense," the same judge who found the State had met its burden at each of the stages is going order the State to reimburse the defendant for all reasonable costs incurred in the defense.

The bill will have a chilling effect on the filing of charges, and probably even on those who decide to undertake a career as a prosecutor. It is not needed here. We ask for a DO NOT PASS vote.

**K - 3.01 Additional Element of Offense - Nonexistence of Defense 2003 (North Dakota Jury Instructions - Criminal (2023 Edition))**

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**K - 3.01. Additional Element of Offense - Nonexistence of Defense 2003**

Evidence has been presented that the Defendant [state the defense]. The State must prove beyond a reasonable doubt, as an additional element of the offense charged, that the Defendant was not [state the defense]. The Defendant does not have the burden of proof as to this defense. If the State has failed to prove beyond a reasonable doubt that the Defendant did not [state the defense], the defendant is entitled to a verdict of not guilty.

\* \* \* \* \*

NDCC 12.1-01-03(1) - (2)

*State v. Olander*, 1998 ND 50, 575 NW2d 658

*State v. Thiel*, 411 NW2d 66 (ND 1987)

**NOTE:** This instruction does not apply to affirmative defenses. For affirmative defenses, see NDJI K - 4.00.

23.0643.02001  
Title.

Prepared by the Legislative Council staff for  
Representative Prichard  
March 28, 2023

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1213

Page 1, line 11, after "guilty" insert ", the court shall determine whether the individual was found not guilty"

Page 1, line 12, replace the underscored comma with ". If the court finds the individual was found not guilty due to self-defense."

Renumber accordingly

23.0643.02001

FIRST ENGROSSMENT

Sixty-eighth  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1213

Introduced by

Representatives Rios, Longmuir, Motschenbacher, Prichard, D. Ruby, Timmons  
Senators Bekkedahl, Paulson

1 A BILL for an Act to create and enact a new section to chapter 12.1-05 of the North Dakota  
2 Century Code, relating to reimbursement for a finding of self-defense when charged with a  
3 crime of violence; and to provide for application.

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

5 **SECTION 1.** A new section to chapter 12.1-05 of the North Dakota Century Code is created  
6 and enacted as follows:

7 **Crime of violence - Self-defense - Reimbursement.**

8 1. As used in this section, "crime of violence" means a violation of state law in which an  
9 individual causes death or physical bodily injury to another individual. The term  
10 includes assault and murder.

11 2. If an individual charged with a crime of violence is found not guilty, the court shall  
12 determine whether the individual was found not guilty due to the justification of self-  
13 defense. If the court finds the individual was found not guilty due to self-defense, the  
14 court may order the state to reimburse the defendant for all reasonable costs incurred  
15 in defense, including loss of wages and time, attorney's fees, and other expenses  
16 involved in the defense. The reimbursement is not an independent cause of action.

17 **SECTION 2. APPLICATION.** This Act applies to criminal charges filed after the effective  
18 date of this Act.