

2021 HOUSE JUDICIARY

HB 1302

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

HB 1302

1/27/2021

Relating to the compromise of misdemeanors.

Chairman Klemin called the hearing to order at 2:30 PM.

Present: Representatives Klemin, Karls, Becker, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter. Absent: Rep, Buffalo

Discussion Topics:

- Dispute resolution options
- Timely case resolution
- Judges discretion

Rep. Becker: Introduced the bill. 2:37

Jackson Lofgren, self: Testimony #3654 2:42

Jaclyn Hall, ND Association for Justice: Testimony #3688 2:51

Chairman Klemin closed the hearing at 2:53.

Do Pass Motion Made by Rep. Satrom Seconded by Rep. Christensen

Roll Call Vote:

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	Y
Rep. Christensen	Y
Rep. Cory	Y
Rep T. Jones	Y
Rep Magrum	Y
Rep Paulson	Y
Rep Paur	Y
Rep Roers Jones	Y
Rep B. Satrom	Y
Rep Vetter	A
Rep Buffalo	A
Rep K. Hanson	Y

Motion carried. 12-0-2. **Rep. Satrom:** Carrier

Additional written testimony: #3823

Chairman Klemin ended the hearing. 2:54

DeLores D. Shimek
Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1302: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1302 was placed on the Eleventh order on the calendar.

January 26, 2021

Testimony to the **House Judiciary Committee**

Submitted By: Jackson J. Lofgren

Testimony in **Support of HB 1302**

Chairman Klemin and Members of the Committee:

My name is Jackson Lofgren. I live in District 35 with my wife, Alicia, and our two children. I am an attorney and small business owner. Since 2013 I have been in private practice in Bismarck with the Suhr & Lofgren law firm. My practice is devoted almost entirely to criminal defense. I support House Bill 1302 and request a **Do Pass** recommendation from this committee.

Compromise of a misdemeanor has existed in North Dakota since before statehood. The concept is fairly simple. In a misdemeanor case where the victim feels fairly compensated by the defendant the victim can ask the judge to stop the prosecution. If the judge agrees the case is dismissed. It is only available in misdemeanor cases and cannot be used for domestic violence or sexual offenses. It is essentially a form of alternative dispute resolution based on the wishes of the victim.

Section 29-01-19 was amended during the 2003 legislative session by adding the words "*and with the consent of the state*" to the end of the statute. This effectively ended compromising misdemeanors in North Dakota. I was a prosecutor for nearly five years. It is a hard job. Many prosecutors fear failing to meet the expectations of law enforcement, face pressure from advocacy groups, know fines and fees have to be collected, and do not want to appear lenient by dismissing a case.

For over one hundred years the defendant and victim could present the compromise directly to the judge. It was up to the judge to decide if the case should be dismissed. This placed victim's rights over arbitrary prosecutorial discretion. House Bill 1302 would allow parties to once again compromise misdemeanors and seek the dismissal of charges no one wants. I would ask for a **Do Pass** recommendation from this committee.

Thank You,

Jackson J. Lofgren



North Dakota Association for Justice

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Jaclyn Hall, Executive Director
(701) 663-3916
jaclyn@ndaj.org

DO PASS - HB 1302

Chairman Klemin and members of the House Judiciary Committee, my name is Jaci Hall and I am the Executive Director of the North Dakota Association for Justice. Today I am here to ask you for a DO Pass recommendation on HB 1302.

HB 1302 amends 29-01-19, removing the consent of the state in a misdemeanor case. This statute is an old compromise statute. The original intent was to allow private citizens to resolve minor squabbles without the involvement of the government.

For example: A young man was out with his friends and upon arriving home, gets trapped in the elevator. The young man calls 911 and it takes over three hours to come and open up the elevator. During that time, the young man relieves himself in the elevator. The young man was charged with a misdemeanor disorderly conduct by the city attorney. His attorney contacted the building owner about the incident. The owner was embarrassed that the elevator did not work properly and signed an affidavit. The case was dismissed.

Around 2003, the statute was changed to require a consent of the state. NDAJ believes that this consent should be removed and returned to the original intent. Adults are capable of making decisions pertaining to minor personal agreements without asking permission of the state or taking up tax payer dollars and trying cases that can be resolved quickly.

Section 29-01-17 already leaves the discretion with the judge, to wit: "If a party injured appears before the court in which a trial for the commission of a public offense is to be had, at any time before the trial, and acknowledges that the party injured has received satisfaction for the injury, the court, on payment of the costs incurred, **may order all proceedings to be stayed upon the prosecution and the defendant to be discharged therefrom**, but in such a case the reasons for the order must be set forth therein and entered on the minutes. (emphasis added).

Thus, there should be no reason why the State gets to consent under the current version of Section 29-01-19. The proposed amendment striking the language "and with the consent of the State" makes sense.

This amendment does not pertain to cases of sexual assault or domestic violence. Those cases are exempt from misdemeanor compromise.

We ask you to amend this statute by a voting DO PASS on HB 1302. Thank you for the opportunity to provide testimony. I will take any questions you may have at this time.

Sincerely,
Jaclyn Hall
NDAJ

January 26, 2021

Testimony to the **House Judiciary Committee**

Submitted By: Jesse Walstad on behalf of the ND Association of Criminal Defense Lawyers

Testimony **in Support of H.B. 1302**

Chairmen and Members of the House Judiciary Committee:

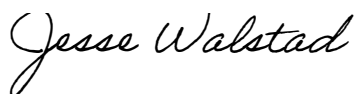
My name is Jesse Walstad and I represent the ND Association of Criminal Defense Lawyers. The NDACDL is made up of lawyers throughout our state who dedicate a portion of their practice to criminal defense. The mission of the NDACDL is “to promote justice and due process” and to “promote the proper and fair administration of criminal justice within the State of North Dakota.” With that mission in mind, the NDACDL **supports H.B. 1302** and recommends a **DO PASS** from the House Judiciary Committee.

The civil compromise of certain misdemeanors and infractions under Sections 29-01-16 through 29-01-19, N.D.C.C., codifies a limited form of restorative justice. Restorative justice promotes restoration of victims of minor crime and encourages offender accountability and reformation. In doing so, the statute builds a sense of community and collaboration by seeking collaborative outcomes that bear a stronger resemblance to civil remedies than criminal punishment. The civil compromise statute was originally codified in the Code of Criminal Procedure of 1877.¹ Section 29-01-19, N.D.C.C., was amended by the 2003 Legislative Assembly to condition the remedy on the “consent of the state.”² The practical import of the 2003 amendment is that prosecutors must approve a civil compromise before a judge can grant relief.

H.B. 1302 would amend the statute to remove the prosecutor consent requirement. Doing so would restore the victim-centric nature of this limited remedy to an agreement between the necessary stake holders: the victim, the offender, and the judge. Once a victim and repentant offender have reached an agreement to make the victim whole, the parties could present the agreement to the judge. The statute affords our courts broad discretion to grant or deny civil compromise relief under the statute which serves as a check to ensure just and fair outcomes. Because the civil compromise of this limited class of misdemeanor and infraction offenses focuses on correcting the private wrongs done to specific victims, the state’s interest in the prosecution of a public wrong is outweighed by the expedient relief to the specific victim.

While the victim-centric civil compromise predates North Dakota’s statehood, access to the remedy is increasingly important today. The proliferation of criminal laws covering matters that were previously addressed solely by private rights of action increases the importance of access to a civil compromise remedy. Further, our court system and prosecutors’ offices bear the ever increasing burden of a growing criminal justice system. Greater accessibility to the civil compromise remedy helps reduce this burden by allowing efficient and non-litigious resolution of minor cases. A more accessible civil compromise remedy would also reduce the burden criminal prosecution places on the citizens of our communities who would otherwise be required to serve on juries and as witnesses. Most importantly it gives the victim a greater voice in the restoration of their own private injury and encourages the genuine accountability of the repentant offender. Accordingly, the NDACDL urges a **DO PASS** on H.B. 1302.

Respectfully,



Jesse Walstad

¹ C. Crim. P. 1877, § 524.

² S.L. 2003, ch. 273, § 2.

2021 SENATE JUDICIARY

HB 1302

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1302
3/31/2021

A BILL for an Act to amend and reenact section 29-01-19 of the North Dakota Century Code, relating to the compromise of misdemeanors.

Hearing called to order Senators Present: **Myrdal, Luick, Dwyer, Bakke, Fors, Larson.**
[9:00]

Discussion Topics:

- Adult Personal Mediation
- Private interests in statute

Rep. Rick Becker, R-Bismarck provided testimony in Favor [9:00]

Jaci Hall, ND Association for Justice provided testimony in Favor #11150 [9:05]

Luke Heck, Vogel Law provided testimony in Favor #11027 [9:10]

Senator Luick Moved a DO PASS [9:17]

Senator Myrdal Seconded the Motion
Vote Passed 6-0-1

Senator Dwyer Carried the Bill

DO PASS ON HB 1302	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Absent
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Hearing Adjourned [9:20]

Jamal Omar, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1302: Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1302 was placed on the Fourteenth order on the calendar.



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DO PASS - HB 1302

Madame Chair Larson and members of the Senate Judiciary Committee, my name is Jaci Hall and I am the Executive Director of the North Dakota Association for Justice. Today I am here to ask you for a DO Pass recommendation on HB 1302.

HB 1302 amends 29-01-19, removing the consent of the state in a misdemeanor case. This statute is an old compromise statute. The original intent was to allow private citizens to resolve minor squabbles without the involvement of the government.

For example: A young man was out with his friends and upon arriving home, gets trapped in the elevator. The young man calls 911 and it takes over three hours to come and open up the elevator. During that time, the young man relieves himself in the elevator. The young man was charged with a misdemeanor disorderly conduct by the city attorney. His attorney contacted the building owner about the incident. The owner was embarrassed that the elevator did not work properly and signed an affidavit. The case was dismissed.

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This amendment does not pertain to cases of sexual assault or domestic violence. Those cases are exempt from misdemeanor compromise.

We ask you to amend this statute by a voting DO PASS on HB 1302. Thank you for the opportunity to provide testimony. I will take any questions you may have at this time.

Sincerely,
Jaclyn Hall
NDAJ

March 30, 2021

Testimony to the **Senate Judiciary Committee**

Submitted By: Luke Heck

Testimony **in Support of H.B. 1302**

Chairmen and Members of the Senate Judiciary Committee:

My name is Luke Heck and I am a criminal defense attorney located in Fargo, and a member of the North Dakota Association of Criminal Defense Lawyers. I write in support of **H.B. 1302**, and further echo the NACDL's support of this legislation.

The civil compromise of certain misdemeanors and infractions under Sections 29-01-16 through 29-01-19, N.D.C.C., codifies a limited form of restorative justice. Restorative justice promotes restoration of victims of minor crime and encourages offender accountability and reformation. In doing so, the statute builds a sense of community and collaboration by seeking collaborative outcomes that bear a stronger resemblance to civil remedies than criminal punishment. The civil compromise statute was originally codified in the Code of Criminal Procedure of 1877.¹ Section 29-01-19, N.D.C.C., was amended by the 2003 Legislative Assembly to condition the remedy on the "consent of the state."² The practical import of the 2003 amendment is that prosecutors must approve a civil compromise before a judge can grant relief.

H.B. 1302 would amend the statute to remove the prosecutor consent requirement. Doing so would restore the victim-centric nature of this limited remedy to an agreement between the necessary stake holders: the victim, the offender, and the judge. Once a victim and repentant offender have reached an agreement to make the victim whole, the parties could present the agreement to the judge. The statute affords our courts broad discretion to grant or deny civil compromise relief under the statute which serves as a check to ensure just and fair outcomes. Because the civil compromise of this limited class of misdemeanor and infraction offenses focuses on correcting the private wrongs done to specific victims, the state's interest in the prosecution of a public wrong is outweighed by the expedient relief to the specific victim.

While the victim-centric civil compromise predates North Dakota's statehood, access to the remedy is increasingly important today. The proliferation of criminal laws covering matters that were previously addressed solely by private rights of action increases the importance of access to a civil compromise remedy. Further, our court system and prosecutors' offices bear the ever increasing burden of a growing criminal justice system. Greater accessibility to the civil compromise remedy helps reduce this burden by allowing efficient and non-litigious resolution of minor cases. A more accessible civil compromise remedy would also reduce the burden criminal prosecution places on the citizens of our communities who would otherwise be required to serve on juries and as witnesses. Most importantly it gives the victim a greater voice in the restoration of their own private injury and encourages the genuine accountability of the repentant offender. Accordingly, I respectfully ask this committee recommend a **DO PASS** on H.B. 1302.

Respectfully,

Luke Heck

¹ C. Crim. P. 1877, § 524.

² S.L. 2003, ch. 273, § 2.