

FISCAL NOTE
Requested by Legislative Council
04/17/2017

Amendment to: HB 1269

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$(188,716)		\$(237,547)	
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Relates to grading of offenses related to illegal possession of controlled substances.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Sections 1,2,3,5,7,8,9,10,11 and 12 have no measurable fiscal impact to the DOCR. The DOCR does not have historical data available that would provide for a reasonable estimate of fiscal impact, if any.

Section 4 allows for an offender convicted under 12.1-17-02 prior to 8/1/15 to be parole board eligible. This change is estimated to reduce the 17-19 average daily prison population by 1 offender and by .5 offender for 19-21.

Section 6 Subsection 1a and 1b - changes the grading of offenses for the manufacture, delivery, possession with intent to manufacture or deliver of a controlled substance from class A felony to class B felony for substances classified in schedule I and II, and changes the minimum mandatory for a 2nd offense from 5 years to 3 years, and the minimum mandatory for a 3rd offense from 20 years to 10 years. Using 2016 prison admission data, the DOCR estimates this change will reduce the 2017-19 estimated average daily prison population from 1,973 to 1,971, and will reduce the 2019-21 estimated average daily prison population from 2,247 to 2,242.

The remaining subsections of Section 6 are either estimated to not have a material fiscal impact to the DOCR, or the DOCR does not have the historical available to provide a reasonable estimate of fiscal impact, if any.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

n/a

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

NOTE that the estimated fiscal impact is determined based on estimated expenditures to provide housing, meals, and medical care for 1,973 inmates for the 2017-19 biennium and 2,247 inmates for the 2019-21 biennium. The 2017-19 estimated fiscal impact is NOT based on either the 2017-19 base budget request, or the 2017-19 revised executive recommendation.

2017-19 Adult Services (\$188,716) - 100% General Funds

2019-21 Adult Services (\$237,547)- 100% General Funds

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Appropriation levels in both the base budget and the revised executive recommendation are under funded to a greater degree than the sum of the calculated savings.

Name: Dave Krabbenhoft

Agency: DOCR

Telephone: 328-6135

Date Prepared: 04/17/2017

FISCAL NOTE
Requested by Legislative Council
03/29/2017

Amendment to: HB 1269

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$(188,716)		\$(237,547)	
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Relates to grading of offenses related to illegal possession of controlled substances.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Sections 1,5, and 7 have no measurable fiscal impact to the DOCR. The DOCR does not have historical data available that would provide for a reasonable estimate of fiscal impact, if any.

Section 4 allows for an offender convicted under 12.1-17-02 prior to 8/1/15 to be parole board eligible. This change is estimated to reduce the 17-19 average daily prison population by 1 offender and by .5 offender for 19-21.

Section 6 Subsection 1a and 1b - changes the grading of offenses for the manufacture, delivery, possession with intent to manufacture or deliver of a controlled substance from class A felony to class B felony for substances classified in schedule I and II, and changes the minimum mandatory for a 2nd offense from 5 years to 3 years, and the minimum mandatory for a 3rd offense from 20 years to 10 years. Using 2016 prison admission data, the DOCR estimates this change will reduce the 2017-19 estimated average daily prison population from 1,973 to 1,971, and will reduce the 2019-21 estimated average daily prison population from 2,247 to 2,242.

The remaining subsections of Section 6 are either estimated to not have a material fiscal impact to the DOCR, or the DOCR does not have the historical available to provide a reasonable estimate of fiscal impact, if any.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

n/a

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

NOTE that the estimated fiscal impact is determined based on estimated expenditures to provide housing, meals, and medical care for 1,973 inmates for the 2017-19 biennium and 2,247 inmates for the 2019-21 biennium. The 2017-19 estimated fiscal impact is NOT based on either the 2017-19 base budget request, or the 2017-19 revised executive recommendation.

2017-19 Adult Services (\$188,716) - 100% General Funds

2019-21 Adult Services (\$237,547)- 100% General Funds

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Appropriation levels in both the base budget and the revised executive recommendation are under funded to a greater degree than the sum of the calculated savings.

Name: Dave Krabbenhoft

Agency: DOCR

Telephone: 328-6135

Date Prepared: 03/29/2017

FISCAL NOTE
Requested by Legislative Council
02/15/2017

Amendment to: HB 1269

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures					\$(102,376)	
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
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Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Relates to and reduces the minimum mandatory sentences related to possession of controlled substances

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 reduces the minimum mandatory sentences.

Section 1 is estimated to have no material impact for the 2017-19 biennium. For the 2019-21 biennium the DOCR estimates this change will reduce 2019-21 estimated average daily prison population from 2,247 to 2,245.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

n/a

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

NOTE that the estimated fiscal impact is determined based on estimated expenditures to provide housing, meals, and medical care for 1,973 inmates for the 2017-19 biennium and 2,247 inmates for the 2019-21 biennium. Estimated impact to expenditures for the 2017-19 biennium is less than \$2,000. This estimated fiscal impact is NOT based on either the 2017-19 base budget or the executive recommendation. 2019-21 Adult Services (\$102,376)- 100% General Funds

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Appropriation levels in both the base budget and the executive recommendation are under funded to a greater degree than the sum of the calculated savings.

Name: Dave Krabbenhoft

Agency: DOCR

Telephone: 328-6135

Date Prepared: 02/15/2017

FISCAL NOTE
Requested by Legislative Council
01/10/2017

Bill/Resolution No.: HB 1269

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures					\$(102,376)	
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

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- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Relates to and reduces the minimum mandatory sentences related to possession of controlled substances

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 has no fiscal impact.

Section 2 reduces the minimum mandatory sentences.

Section 2 is estimated to have no material impact for the 2017-19 biennium. For the 2019-21 biennium the DOCR estimates this change will reduce 2019-21 estimated average daily prison population from 2,247 to 2,245.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

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- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

NOTE that the estimated fiscal impact is determined based on estimated expenditures to provide housing, meals, and medical care for 1,973 inmates for the 2017-19 biennium and 2,247 inmates for the 2019-21 biennium. Estimated impact to expenditures for the 2017-19 biennium is less than \$2,000. This estimated fiscal impact is NOT based on either the 2017-19 base budget or the executive recommendation.
 2019-21 Adult Services (\$102,376)- 100% General Funds

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Appropriation levels in both the base budget and the executive recommendation are under funded to a greater degree than the sum of the calculated savings.

Name: Dave Krabbenhoft

Agency: DOCR

Telephone: 328-6135

Date Prepared: 01/16/2017

2017 HOUSE JUDICIARY

HB 1269

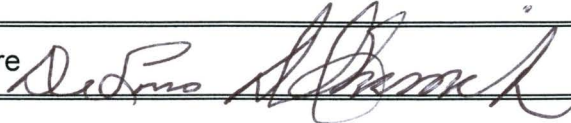
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1269
1/23/2017
27225

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to mandatory sentences; and to provide a penalty.

Minutes:

1

Chairman K. Koppelman: Opened the hearing on HB 1269.

Rep. Olson: (#1) From Gary Euren. Read his testimony. (1:00-10:23) The amendment I would offer I don't have printed out. Originally if you look at the bill on lines 10 & 11 I was striking out the section. That is the recommendation I would make to allow the flexibility in charging and sentencing for possession with intent to deliver with any of the controlled substances; Class 1,2,3 or 4 and that is subdivisions a, b or c in Section 19.03.1.23.

Representative Magrum: Repeat that last part about line 10 & 11.

Rep. Olson: Strike out the final sentence of Section 1 amendment that begins on line 10, with the word this and the entire sentence on line 11.

Chairman K. Koppelman: So you would be capturing schedule 4 controlled substances in your bill and schedule 1,2, & 3.

Rep. Olson: Now only eliminate Subsection C. It is up to the prosecutors to decide and it only applies. This only applies to convictions which result in a year or less.

Chairman K. Koppelman: We did pass legislation last session that allows judges to depart from mandatory minimum sentencing. The process is the judge has to find that there was a manifest injustice to apply the mandatory minimum sentence. I don't know that it has been used at all.

Rep. Olson: But they would still be convicted of a felony. In this bill it will allow the conversion of the felony to a misdemeanor by disposition.

Chairman K. Koppelman: Line 7 of the current statute says this applies to person convicted of a felony and sentenced to imprisonment for not more than one year. Even though the mandatory minimum exists now a judge could sentence to less than that.

Representative Klemin: Manifest Injustice was difficult to even get that through the prosecutors and judges.

Chairman K. Koppelman: The stigma of a felony is something we have talked a lot about.

Jackson Lofgen, President of the ND Association of Criminal Defense Lawyers: Support of HB 1269. It excludes certain delivery offenses from getting that misdemeanor disposition. I think to strike that last line; most defense attorneys would be on board with that. There are a couple other bills that do some things with 19-03.123. SB 2949 is Representative Klemin is a co-sponsor on this bill.

Aaron Birst, Association of Counties: We support this bill. The states attorneys have come to a conclusion that the prosecutors are opposed to mandatory minimum sentencing need to be reevaluated.

Chairman K. Koppelman: The lack of that provision use has already been done by the legislature. The judges can already use that.

Aaron Birst: Last I heard there were maybe one, if any, the reporting mechanism scared the judges.

Chairman K. Koppelman: Legislator might be uncomfortable doing away with mandatory minimum management.

Aaron Birst: It has always been better to look at mandatory minimum management. New DUI they were uncomfortable with that.

Representative Satrom: Do we have data on whether the threat of a felony is a deterrent or whether we might be opening up any potential additional problem?

Aaron Birst: There is plenty of data and studies available. The distinction between doing a felony and a misdemeanor does not seem to affect the criminal's action.

Representative Klemin: I heard Aaron say it would only apply to a first offense and you proposed an amendment to delete the reference to those other three subsections.

Aaron Birst: I need time to think that through. The State's Attorney are saying lets continually make gradual step downs. If this could be related to first offenders, it would be OK.

Chairman K. Koppelman: On the current statute on line 7 this whole thing kicks in with people who are convicted of a felony and sentenced to imprisonment for not more than one year. In current statutes they have longer sentences for second and their and those kinds of offenses.

Aaron Birst: We think a number of these bills will pass and then go to conference committees to work through them.

Opposition: None

Neutral: None

Hearing closed.

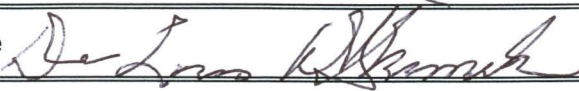
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1269
2/6/2017
28020

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Minutes:

Chairman K. Koppelman: Opened the meeting on HB1269. Discussing proposed amendment on this. If we amend that out we would be reducing the mandatory minimums for meth for the 3rd of subsequence offense from 20 to 10 years and any other controls substance classified in Schedule 1,2,3 for the 3rd or subsequent offense we would be reducing that from 10 years to 5. For controlled substance in Schedule 4 we would be reducing that from 5 years to 3 years. If it is a felony it is a prior. That would be the other change.

Representative Nelson: if people remember the mandatory minimum and maximum sentence are exactly the same. So by reducing it some it leaves some court discursion.

Representative Hanson: Aaron Birst expressed some concern with doing away with minimums on the with DUI laws since they are so new.

Chairman K. Koppelman: Rep. Hanson would you check on that with legislative counsel. I think Rep. Nelson is right.

Closed.

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1269
2/14/2017
28321

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to mandatory sentences; and to provide a penalty.

Minutes:

1

Chairman K. Koppelman: Reopened the meeting on HB 1269. I have no problem with the bill as it stands. I think we should remove Section 1. This is a move to recognize that judges have the ability to look at each case individually and make some decisions based on the facts of those cases. Those mandatory minimum sentences do hamstring courts. Manifest injustice has not been used yet.

Motion Made to amend the proposed bill and remove Section 1 by Representative Maragos: Seconded by Rep. Satrom.

Discussion:

Representative Vetter: The rest of this is existing law?

Chairman K. Koppelman: The rest of the bill shortens the sentences and that was what the bill was trying to get at. There would be a lower minimum throughout the bill. Section 1 deals with drugs.

Representative Jones: If we get rid of it in the bill; does it stay in statute?

Voice vote carried.

Do Pass as Amended Motion Made by Rep. Vetter; Seconded by Rep. Satrom

Discussion: None

Roll Call Vote: 15 Yes 0 No 0 Absent Carrier: Rep. Vetter

Closed.

2/14/17 *ES*

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Title.03000

Adopted by the Judiciary Committee

February 14, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1269

Page 1, line 1, remove "subsection 9 of section 12.1-32-02 and"

Page 1, remove lines 5 through 11

Renumber accordingly

2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO 1269

House Judiciary Committee

Subcommittee

Amendment LC# or Description: Remove Section 1

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep Maragos Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment : _____

If the vote is on an amendment, briefly indicate intent:

*Vote
 Vote
 carried*

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO 1269**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Wetter Seconded By Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson	✓	
Vice Chairman Karls	✓		Rep. Nelson	✓	
Rep. Blum	✓				
Rep. Johnston	✓				
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum	✓				
Rep. Maragos	✓				
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 15 No 0

Absent 0

Floor Assignment : Rep. Wetter

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1269: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1269 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "subsection 9 of section 12.1-32-02 and"

Page 1, remove lines 5 through 11

Renumber accordingly

2017 SENATE JUDICIARY

HB 1269

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1269
3/6/2017
28747

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to mandatory sentences; and to provide a penalty.

Minutes: Testimony attached #

1

Chairman Armstrong called the committee to order on HB 1269. All committee members were present.

Christopher Olson, North Dakota State Representative District 13, introduced and testified in support of the bill. No written testimony. He passed out his proposed amendment. (see attachment 1) Representative Olson went over the different sections of the bill.

“The main change is to lower the minimum mandatory sentences relating to drug offenses. One of the benefits for this change gives the prosecutors more discretion regarding sentencing. The second change is on line 7 page 2, we believe this provision is important for transparency, honesty, and fairness.”

Chairman Armstrong: “This helps clear up the confusion in the language?”

Representative Olson: “Correct.”

Representative Olson discussed the purpose of the Amendment. (see attachment 1)

Chairman Armstrong: “Violating sub sections a,b,c, or, b. I’m assuming it’s supposed to be D? On the Amendment you handed out, the language that has a strike through it. That second B should come out.”

Representative Olson: “Correct. That was a typo.”

Chairman Armstrong: “I’m going to ask you to do something for me because I have a couple questions. There’s something that’s in subsection D that’s a little different; where we put in controlled substance. I just testified in the House Judiciary committee on SB 2149 which has the same statutes. Could you verify that the two bills work together, 2149 is the Senate bill number?”

Representative Olson: "Yes, I can."

Senator Nelson: "The use of the word controlled, I noticed it was in subsections A and B, do you think they just want to be consistent that's why they are putting that in?"

Representative Olson: "I think that was put in by council. I can check on that."

Chairman Armstrong closed the hearing on HB 1269.

No motions were made.

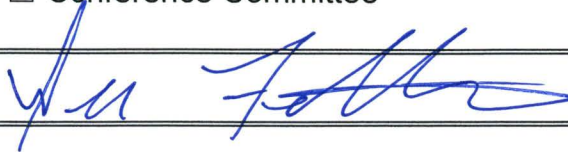
2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1269 Committee Work
3/28/2017
29753

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to mandatory sentences; and to provide a penalty.

Minutes:

Attachments

1

Chairman Armstrong began the discussion on HB 1269. All committee members were present.

The committee reviewed the proposed amendment. (see attachment 1)

Senator Larson motioned to Adopt the Amendment. **Senator Myrdal** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Senator Myrdal motioned for Do Pass as Amended. **Senator Luick** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Chairman Armstrong carried the bill.

Chairman Armstrong ended the discussion on HB 1269.

March 28, 2017

CS
3/28-2017
1 of 7

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1269

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 12.1-32-09.1 of the North Dakota Century Code, relating to sentencing for aggravated assault; to amend and reenact subdivision k of subsection 3 of section 12.1-23-05, subsection 5 of section 12.1-32-01, subdivision b of subsection 1 of section 12.1-32-02.1, sections 19-03.1-22.3 and 19-03.1-23, subsection 2 of section 19-03.1-23.1, section 19-03.1-23.4, paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36, subdivision e of subsection 5 of section 19-03.1-36, subsection 1 of section 19-03.1-45, and subsection 29 of section 40-05-02 of the North Dakota Century Code, relating to grading of theft offenses, illegal possession of prescription capsules, pills, or tablets, possession of marijuana, ingesting a controlled substance, and misdemeanor marijuana convictions being excluded as prior offenses for purposes of determining mandatory terms of imprisonment; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision k of subsection 3 of section 12.1-23-05 of the North Dakota Century Code is amended and reenacted as follows:

- k. The property stolen is a prescription drug as defined in section 43-15.3-01, except when the quantity stolen is five or fewer capsules, pills, or tablets.

SECTION 2. AMENDMENT. Subsection 5 of section 12.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment for three hundred sixty days, a fine of three thousand dollars, or both, may be imposed.

SECTION 3. AMENDMENT. Subdivision b of subsection 1 of section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

- b. The offender possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing any felony offense under subsection 1, 23, or 78 of section 19-03.1-23.

SECTION 4. A new subsection to section 12.1-32-09.1 of the North Dakota Century Code is created and enacted as follows:

An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.

CV
3/26/2017
R of 7

SECTION 5. AMENDMENT. Section 19-03.1-22.3 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.

A person who intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance, unless the substance was obtained directly from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, is guilty of a class B misdemeanor if the controlled substance is marijuana. Otherwise, the offense is a class A misdemeanor. The venue for a violation of this section exists in either the jurisdiction in which the controlled substance was ingested, inhaled, injected, or otherwise taken into the body or the jurisdiction in which the controlled substance was detected in the body of the accused.

SECTION 6. AMENDMENT. Section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23. Prohibited acts A - Mandatory terms of imprisonment and fines - Unclassified offenses - Penalties.

1. Except as authorized by this chapter, it is unlawful for anya person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a controlled substance by means of the internet, but anya person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. AnyA person who violates this subsection with respect to:

a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class AB felony and must be sentenced:

(1) For a second offense, to imprisonment for at least five years.

(2) For a third or subsequent offense, to imprisonment for twenty years.

b. Any other controlled substance classified in schedule I, II, or III, or a controlled substance analog is guilty of a class B felony. Except for a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, any person found guilty under this subdivision must be sentenced:

(1) For a second offense, to imprisonment for at least three years.

(2) For a third or subsequent offense, to imprisonment for ten years.

c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:

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- (1) For a second offense, to imprisonment for at least ~~six~~three months.
 - (2) For a third offense, to imprisonment for at least ~~one year~~six months.
 - (3) For a fourth or subsequent offense, to imprisonment for ~~five~~three years.
- d. A substance classified in schedule V, is guilty of a class A misdemeanor.
2. A prior misdemeanor conviction under subsection 8 or a prior conviction under subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under subsections 1 and 4.
3. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit substance by means of the internet or any other means, or possess with intent to deliver, a counterfeit substance by means of the internet or any other means, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
- a. ~~A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.~~
 - b. ~~Any other~~A counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
 - ~~e.~~b. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
 - ~~d.~~c. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
- ~~3.4.~~ For second or subsequent offenders, in addition to any other penalty imposed under this section, a person who violates this chapter, except a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:
- a. ~~Any~~A person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school is subject to ~~an eight-year~~a four-year term of imprisonment.
 - b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to imprisonment for at least ~~eight~~four years. It is not a defense that the defendant did not know the age of a person protected under this subdivision.

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4 of 7

4-5. A person at least eighteen years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to aid or assist in the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance for the purpose of receiving consideration or payment for the manufacture or delivery of any controlled substance is guilty of a class B felony and must be sentenced:

- a. For a second or subsequent offense, to imprisonment for at least five years.
- b. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.

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6. Except for a prior conviction equivalent to a misdemeanor violation of subsection 8 or a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this chapter or a law of another state or the federal government which is equivalent to an offense under this chapter committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, ~~34~~, and 45. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.

6-7. It is unlawful for a person to willfully, as defined in section 12.1-02-02:

- a. Serve as an agent, intermediary, or other entity that causes the internet to be used to bring together a buyer and seller to engage in the delivery, distribution, or dispensing of a controlled substance in a manner not authorized by this chapter; or
- b. Offer to fill or refill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire.

A person who violates this subsection is guilty of a class C felony.

7-8. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.

b. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class C felony.

c. If, at the time of the offense the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony, unless the offense involves one ounce [28.35 grams] or less of marijuana. ~~Any~~

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d. A person who violates this subsection regarding possession of one ounce [28.35 grams] or less of marijuana is guilty of a class B misdemeanor.

e. A person who violates this subsection regarding possession of five or fewer capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or controlled substance analog is guilty of a class A misdemeanor.

8-9. Except as provided by section 19-03.1-45, a court may order a person who violates this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed addiction counselor. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. If ordered, the evaluation must be submitted to the court before imposing punishment for a felony violation or a misdemeanor violation. A court shall order a person who violates subdivision e of subsection 8 to undergo the drug addiction evaluation.

9-10. If a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall seal the court record of that conviction if the person is not subsequently convicted within two years of a further violation of this chapter. Once sealed, the court record may not be opened even by order of the court.

SECTION 7. AMENDMENT. Subsection 2 of section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

2. The offense is:

- ~~a.~~ A class AA felony if the violation of section 19-03.1-23 is designated as a class A felony.
- ~~b.~~ A class A felony if the violation of section 19-03.1-23 is designated as a class B felony.
- ~~e.b.~~ A class B felony if the violation of section 19-03.1-23 is designated as a class C felony.
- ~~d.c.~~ A class C felony if the violation of section 19-03.1-23 is designated as a class A misdemeanor.

SECTION 8. AMENDMENT. Section 19-03.1-23.4 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23.4. Overdose prevention and immunity.

An individual is immune from criminal prosecution under sections 19-03.1-22.1, 19-03.1-22.3, 19-03.1-22.5, subsection 7 of section 19-03.1-23, subsection 3 of section 19-03.2-03, and section 19-03.4-03 if in good faith that individual contacted law enforcement or emergency medical services and reported that the individual was or that seeks medical assistance for another individual was in need of emergency medical assistance due to a drug overdose. To receive immunity under this section, the individual receiving immunity must have remained on the scene until assistance arrived, cooperated with emergency medical services and law enforcement personnel ~~in~~ the medical treatment of the reported drug overdosed individual, and the overdosed

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3/28/2013
6 of 7

~~individual must have been in need of emergency medical services. The maximum number of individuals that may be immune for any one occurrence is three individuals a condition a layperson would reasonably believe to be a drug overdose requiring immediate medical assistance. Neither the individual who experiences a drug-related overdose and is in need of emergency medical assistance nor the cooperating individual seeking medical assistance may be charged or prosecuted for the criminal offenses listed in this section or for the sharing of controlled substances among those present. Immunity from prosecution under this section is not applicable for a violation under section 19-03.1-23.1 does not apply unless the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for emergency medical assistance. Good faith does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or during a lawful search.~~

SECTION 9. AMENDMENT. Paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

- (3) A conveyance is not subject to forfeiture for a violation of subsection 78 of section 19-03.1-23 or subsection 3 of section 19-03.2-03.

SECTION 10. AMENDMENT. Subdivision e of subsection 5 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

- e. Use the property, including controlled substances, imitation controlled substances, and plants forfeited under subsections 6 and 7, in enforcement of this chapter. However, in a case involving the delivery of a forfeited controlled substance by a law enforcement officer or a person acting as an agent of a law enforcement officer, no prosecution or conviction for simple possession of a controlled substance under subsection 67 of section 19-03.1-23 may be based upon the forfeited controlled substances supplied by the law enforcement officer or the officer's agent.

SECTION 11. AMENDMENT. Subsection 1 of section 19-03.1-45 of the North Dakota Century Code is amended and reenacted as follows:

- 1. If a person has pled guilty or has been found guilty of a felony violation of subsection 78 of section 19-03.1-23, if that person has not previously pled guilty or been found guilty of any offense involving the use, possession, manufacture, or delivery of a controlled substance or of any other felony offense of this or another state or the federal government, the court shall impose a period of probation up to the length authorized under section 12.1-32-06.1 with a suspended execution of a sentence of imprisonment, a sentence to probation, or an order deferring imposition of sentence.

SECTION 12. AMENDMENT. Subsection 29 of section 40-05-02 of the North Dakota Century Code is amended and reenacted as follows:

- 29. Marijuana possession. To prohibit by ordinance any person, except a person operating a motor vehicle, from possessing not more than one-half ounce [14.175 grams] of marijuana, as defined by section 19-03.1-01, within the jurisdiction of a city, and to prescribe the punishment, provided the penalty assessed is subject to subsection 910 of section 19-03.1-23."

Renumber accordingly

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3/28/2012
7 of 7

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1269**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0633.03001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Larson Seconded By Senator Myrdal

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1269**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0633.03001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Senator Myrdal Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Chairman Armstrong

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1269, as engrossed: Judiciary Committee (Sen. Armstrong, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1269 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 12.1-32-09.1 of the North Dakota Century Code, relating to sentencing for aggravated assault; to amend and reenact subdivision k of subsection 3 of section 12.1-23-05, subsection 5 of section 12.1-32-01, subdivision b of subsection 1 of section 12.1-32-02.1, sections 19-03.1-22.3 and 19-03.1-23, subsection 2 of section 19-03.1-23.1, section 19-03.1-23.4, paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36, subdivision e of subsection 5 of section 19-03.1-36, subsection 1 of section 19-03.1-45, and subsection 29 of section 40-05-02 of the North Dakota Century Code, relating to grading of theft offenses, illegal possession of prescription capsules, pills, or tablets, possession of marijuana, ingesting a controlled substance, and misdemeanor marijuana convictions being excluded as prior offenses for purposes of determining mandatory terms of imprisonment; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision k of subsection 3 of section 12.1-23-05 of the North Dakota Century Code is amended and reenacted as follows:

- k. The property stolen is a prescription drug as defined in section 43-15.3-01, except when the quantity stolen is five or fewer capsules, pills, or tablets.

SECTION 2. AMENDMENT. Subsection 5 of section 12.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

5. Class A misdemeanor, for which a maximum penalty of ~~one year's~~ imprisonment for three hundred sixty days, a fine of three thousand dollars, or both, may be imposed.

SECTION 3. AMENDMENT. Subdivision b of subsection 1 of section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

- b. The offender possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing any felony offense under subsection 1, ~~23~~, or ~~78~~ of section 19-03.1-23.

SECTION 4. A new subsection to section 12.1-32-09.1 of the North Dakota Century Code is created and enacted as follows:

An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.

SECTION 5. AMENDMENT. Section 19-03.1-22.3 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.

A person who intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance, unless the substance was obtained directly from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, is guilty of a class B misdemeanor if the controlled substance is marijuana. Otherwise, the offense is a class A misdemeanor. The venue for a violation of this section exists in either the jurisdiction in which the controlled substance was ingested, inhaled, injected, or otherwise taken into the body or the jurisdiction in which the controlled substance was detected in the body of the accused.

SECTION 6. AMENDMENT. Section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23. Prohibited acts A - Mandatory terms of imprisonment and fines - Unclassified offenses - Penalties.

1. Except as authorized by this chapter, it is unlawful for ~~anya~~ person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a controlled substance by means of the internet, but ~~anya~~ person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. ~~Any~~A person who violates this subsection with respect to:
 - a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class AB felony and must be sentenced:
 - (1) For a second offense, to imprisonment for at least ~~five~~three years.
 - (2) For a third or subsequent offense, to imprisonment for ~~twenty~~ten years.
 - b. Any other controlled substance classified in schedule I, II, or III, or a controlled substance analog is guilty of a class B felony. Except for a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, any person found guilty under this subdivision must be sentenced:
 - (1) For a second offense, to imprisonment for at least ~~three~~two years.
 - (2) For a third or subsequent offense, to imprisonment for ~~ten~~five years.
 - c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:
 - (1) For a second offense, to imprisonment for at least ~~six~~three months.
 - (2) For a third offense, to imprisonment for at least ~~one year~~six months.
 - (3) For a fourth or subsequent offense, to imprisonment for ~~five~~three years.

- d. A substance classified in schedule V, is guilty of a class A misdemeanor.
2. A prior misdemeanor conviction under subsection 8 or a prior conviction under subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under subsections 1 and 4.
3. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit substance by means of the internet or any other means, or possess with intent to deliver, a counterfeit substance by means of the internet or any other means, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
 - a. ~~A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.~~
 - b. ~~Any other~~A counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
 - e.b. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
 - d.c. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
- 3-4. For second or subsequent offenders, in addition to any other penalty imposed under this section, a person who violates this chapter, except a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:
 - a. ~~Any~~A person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school is subject to ~~an eight-year~~a four-year term of imprisonment.
 - b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to imprisonment for at least ~~eight~~four years. It is not a defense that the defendant did not know the age of a person protected under this subdivision.
- 4.5. A person at least eighteen years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to aid or assist in the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance for the purpose of receiving consideration or payment for the manufacture or delivery of any controlled substance is guilty of a class B felony and must be sentenced:
 - a. For a second or subsequent offense, to imprisonment for at least ~~five~~three years.
 - b. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.

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6. Except for a prior conviction equivalent to a misdemeanor violation of subsection 8 or a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this chapter or a law of another state or the federal government which is equivalent to an offense under this chapter committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, ~~34~~, and ~~45~~. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.

~~6-7.~~ It is unlawful for a person to willfully, as defined in section 12.1-02-02:

- a. Serve as an agent, intermediary, or other entity that causes the internet to be used to bring together a buyer and seller to engage in the delivery, distribution, or dispensing of a controlled substance in a manner not authorized by this chapter; or
- b. Offer to fill or refill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire.

A person who violates this subsection is guilty of a class C felony.

~~7-8.~~ a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.

b. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class C felony.

c. If, at the time of the offense the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony, unless the offense involves one ounce [28.35 grams] or less of marijuana. ~~Any~~

d. A person who violates this subsection regarding possession of one ounce [28.35 grams] or less of marijuana is guilty of a class B misdemeanor.

e. A person who violates this subsection regarding possession of five or fewer capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or controlled substance analog is guilty of a class A misdemeanor.

~~8-9.~~ Except as provided by section 19-03.1-45, a court may order a person who violates this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed addiction counselor. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. If ordered, the evaluation must be submitted to the court before imposing punishment for a felony violation or a misdemeanor

violation. A court shall order a person who violates subdivision e of subsection 8 to undergo the drug addiction evaluation.

- 9-10. If a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall seal the court record of that conviction if the person is not subsequently convicted within two years of a further violation of this chapter. Once sealed, the court record may not be opened even by order of the court.

SECTION 7. AMENDMENT. Subsection 2 of section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

2. The offense is:
 - a. ~~A class AA felony if the violation of section 19-03.1-23 is designated as a class A felony.~~
 - b. A class A felony if the violation of section 19-03.1-23 is designated as a class B felony.
 - e.b. A class B felony if the violation of section 19-03.1-23 is designated as a class C felony.
 - d.c. A class C felony if the violation of section 19-03.1-23 is designated as a class A misdemeanor.

SECTION 8. AMENDMENT. Section 19-03.1-23.4 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23.4. Overdose prevention and immunity.

An individual is immune from criminal prosecution under sections 19-03.1-22.1, 19-03.1-22.3, 19-03.1-22.5, subsection 7 of section 19-03.1-23, subsection 3 of section 19-03.2-03, and section 19-03.4-03 if in good faith that individual contacted law enforcement or emergency medical services and reported that the individual was or that seeks medical assistance for another individual was in need of emergency medical assistance due to a drug overdose. To receive immunity under this section, the individual receiving immunity must have remained on the scene until assistance arrived, cooperated with emergency medical services and law enforcement personnel in the medical treatment of the reported drug overdosed individual, and the overdosed individual must have been in need of emergency medical services. The maximum number of individuals that may be immune for any one occurrence is three individuals a condition a layperson would reasonably believe to be a drug overdose requiring immediate medical assistance. Neither the individual who experiences a drug-related overdose and is in need of emergency medical assistance nor the cooperating individual seeking medical assistance may be charged or prosecuted for the criminal offenses listed in this section or for the sharing of controlled substances among those present. Immunity from prosecution under this section is not applicable for a violation under section 19-03.1-23.1 does not apply unless the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for emergency medical assistance. Good faith does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or during a lawful search.

SECTION 9. AMENDMENT. Paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

- (3) A conveyance is not subject to forfeiture for a violation of subsection 78 of section 19-03.1-23 or subsection 3 of section 19-03.2-03.

SECTION 10. AMENDMENT. Subdivision e of subsection 5 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

- e. Use the property, including controlled substances, imitation controlled substances, and plants forfeited under subsections 6 and 7, in enforcement of this chapter. However, in a case involving the delivery of a forfeited controlled substance by a law enforcement officer or a person acting as an agent of a law enforcement officer, no prosecution or conviction for simple possession of a controlled substance under subsection 67 of section 19-03.1-23 may be based upon the forfeited controlled substances supplied by the law enforcement officer or the officer's agent.

SECTION 11. AMENDMENT. Subsection 1 of section 19-03.1-45 of the North Dakota Century Code is amended and reenacted as follows:

1. If a person has pled guilty or has been found guilty of a felony violation of subsection 78 of section 19-03.1-23, if that person has not previously pled guilty or been found guilty of any offense involving the use, possession, manufacture, or delivery of a controlled substance or of any other felony offense of this or another state or the federal government, the court shall impose a period of probation up to the length authorized under section 12.1-32-06.1 with a suspended execution of a sentence of imprisonment, a sentence to probation, or an order deferring imposition of sentence.

SECTION 12. AMENDMENT. Subsection 29 of section 40-05-02 of the North Dakota Century Code is amended and reenacted as follows:

29. Marijuana possession. To prohibit by ordinance any person, except a person operating a motor vehicle, from possessing not more than one-half ounce [14.175 grams] of marijuana, as defined by section 19-03.1-01, within the jurisdiction of a city, and to prescribe the punishment, provided the penalty assessed is subject to subsection 910 of section 19-03.1-23."

Renumber accordingly

2017 CONFERENCE COMMITTEE

HB 1269

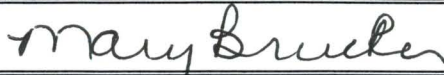
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1269
4/6/2017
29982

Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to mandatory sentences; and to provide a penalty.

Minutes:

No attachments

Chairman K. Koppelman: Opened the conference committee on HB 1269.

Pat Bohn: I hear and share your concerns, Rep. Larson. This is a scary situation about having a discussion on pulling back on these policies. There are a lot of good reasons this could work. People who get involved with drug activity, usage and addiction in particular, think in terms of these long term consequences and the felonies. The unintended consequences in regards to housing, jobs, and travel play in effect. It's a scary decision to be making because we've spent three decades putting a lot of felonies on the books surrounding drug possession, drug usage, drug delivery, and manufacturing. Now, we're having discussion about pulling back some of those previous policies. There are legitimate concerns, and I respect those concerns.

Chairman K. Koppelman: How many offenders are in the State Penitentiary with the C felony possession offences?

Pat Bohn: It is not just one offense; they usually also have theft of property because they stole, so they could buy the drugs. Then they ran from the cops, so now they have a fleeing charge. When I look on a regular basis, the common denominator across all the offenses is paraphernalia and possession. You can't say it is just one offense. On average the person has about three offenses.

Rep. Satrom: If we do a C felony or a misdemeanor, are we taking any treatment or rehabilitation options off the table, if we do one versus the other?

Pat Bohn: I don't see us taking anything off the table. If they come to us with that sentence of up to 360 days, we'll be able to get them into our treatment program and complete them. If they are in the community and on supervised probation, we have the whole behavioral health initiative coming out that should bolster some more of those resources in the communities. They can access chemical addiction services more readily, especially for this

population that is caught up in the criminal justice system. If there are subsequent violations, you still have that penalty of a potential revocation and placement in the prison. Often if there are violations, there are other new crimes that go along with that. Those new crimes could also be disposed of, and they could start over with some of those as well. I don't see that it changed the landscape on that issue.

Rep. Nelson: Judges are giving them longer sentences, so they go to the penitentiary and get treatment. Now we're cutting the sentences back. My big concern is not my desire to penalize, but to assure we actually start to break this cycle. Are you feeling that we're probably going to get things in place, so if someone gets an A misdemeanor with possession, that he's actually going to get treatment?

Pat Bohn: I think our efforts on trying to put more treatment facilities in the community is where we are going. People should not be presentenced to prison just because they need treatment. If they are, we should have the resources to be able to deliver those services and be able to get them done within those first six to eight months of their arrival.

Senator Armstrong: We have maintained for two sessions, two years of supervised probation on A misdemeanor. There have been pushes to get rid of that. If you take this from the presumption that being tough on crime has actually worked, and you look at violent crime across the country, the crime rates have lowered. But, what doesn't hold water is drug crime. Drug rates haven't changed much. Drug use rates haven't changed much, and drug incarceration rates have gone way up. I think we do our best to stay out of the violent areas and only deal with drug crimes.

Chairman K. Koppelman: The general understanding of what it means to have a tough sentence or not, to me, is if someone has a felony we're being tough, but if they have a misdemeanor, that's just a slap on the wrist. Now, we are talking about a Class A misdemeanor and a Class C felony in terms of diversion, treatment, supervision, and all those things there's no difference. In terms of actual sentence, we might be talking about five or six days' difference theoretically. The stigma and the question of are you a felon, or did you commit a misdemeanor is huge with those collateral consequences. I'm trying to understand this from an unbiased position. We discussed earlier days of getting tough on crime. I think we're on to something here with the whole effort. I'm open to the discussion about the specifics. I've learned that to me a felony is a big deal, and if that's on your record it's a life sentence in a lot of ways. A misdemeanor is when you got into trouble but you move on.

Senator Larson: I have voted for and am in favor of rolling back some of the mandatory minimum of things. We've heard from prosecutors in the prison system. Could we ask Pam Sagnes to provide us with information and statistical information on the kinds of drugs we're talking about in this particular section? Pam, through any of the research you found has a more severe penalty for a crime or lessening that penalty made any difference?

Pam Sagnes, Department of Human Services, Director of the Behavioral Health Division: One of the things that's important, and a role that we've had so far is identifying that. When we look at getting access to treatment and looking at drug addiction we're talking about alcohol use. It's important to note that individuals have access to treatment, but also quality treatment. One thing we know in North Dakota is that we've heard judges are

sentencing individuals to prison in order to seek treatment. Our concern is that criminalizing addiction tends to have more negative effects. The impact of an individual who already has an addiction and is now put into a situation where they are surrounded by other individuals, who may have real criminal behavior, can actually be worsened. I can't say that I have research that speaks directly to whether something is a misdemeanor or a felony, but criminalizing addiction doesn't tend to produce the outcome that reduces addiction or crime related to drug and alcohol use in the first place.

Senator Larson: Including things like methamphetamines and heroin?

Pam Sagness: Addiction with all substances is a chronic disease and really needs to have the type of intervention that's going to be ongoing, which is why the community based programs are so important. What's more effective is to look at ongoing long term community based services versus short punitive or short treatment, which is less effective.

Chairman K. Koppelman: That discussion is mostly about this section of 1041, and it's one we have to have. These are not easy issues. I appreciate the committee's interest in it and diligence toward it, so we'll continue to talk about those things.

Senator Armstrong: Representative Olson sent us a bill that was similar. When discussing this with the prosecutor and Representative Olson, we decided to put these all in one package. We removed all the Class A felonies out of Chapter 19. The only way you would end up there is with the enhancement, which is either a dangerous armed offender or career criminal statute. Then you could escalate to the A felony. We cut all the minimum mandatories in half. In section 1 we put in five pills or fewer as an A misdemeanor. This is creating a misdemeanor disposition. We made sure a prior misdemeanor drug conviction was not used for enhancements for minimum mandatories. It's 360 days versus 365 days for a Class A misdemeanor; we did that in the DUI law four years ago. We want the federal government to treat our misdemeanors the same way we treat our misdemeanors, whether it's for immigration purposes, gun rights restoration, etc. If you would factor out the good time, if you got the max sentence on a Class A misdemeanor, you're talking a four-hour difference in sentence. In section 5 the ingesting language on the marked up version, it says injects, and that was on the recommendation dealing with heroin and those types of things. A B misdemeanor for marijuana and all the other offenses are an A misdemeanor, and that's where we got a reconciled 1041. Whichever way we go, we have to make sure it's out of one of the bills or the same in both of the bills. The two major policy shifts are creating a misdemeanor prescription pill disposition in Section 6. This is essentially what Representative Olson's bill did; we just reduced the class level as well.

Senator Nelson: Is our goal to go section by section, and say what we want and come up with a totally composite bill, but not the same as any of these?

Chairman K. Koppelman: In Representative Olson's bill we didn't see the need for both 1269 and 2149. If the committee agrees to some form of this, which you've done with 1269 in the Senate, we can probably dispose of 2149.

Senator Nelson: There is no conflict anywhere. It might be that the last bill in, is what rides.

Senator Armstrong: I will have that fixed before we're done. I promise you.

Chairman K. Koppelman: We will keep these two bills and schedule the conference committees back to back. We're going to hold 2149 until we are done with this, and then decide how to dispose of that.

Senator Armstrong: I would check on the school zone bill because that language is in these two as well. Either that or we could cut that language out of these bills and deal with that. That bill is 1341.

Chairman K. Koppelman: Kelly, can you check on 1341 and look at that language as it relates to school zones in that bill and in both of these, and then give us a synopsis on how they are different?

Meeting adjourned.

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1269
4/11/2017
30039

Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to mandatory sentences; and to provide a penalty.,

Minutes:

Attendance: Chairman Koppelman, Rep. Satrom, Rep M. Nelson; Senator Armstrong, Senator D. Larson, Senator C. Nelson

Chairman K. Koppelman: Opened the conference committee on HB 1269. This is joined with HB 1041 and SB 2149 and moving forward with the provisions. We just had a discussion on considered disposing of SB 2149; which is Senator Armstrong bill and probably just moving forward with 1269 with the provisions that we all want to have it include.

Senator Armstrong: This bill just adds some other language that I had in 2149. That is reducing the minimum mandatories in half, which was the same thing. We took all the A felony out of the drug code and left everything in the B. We need to have a framework to work off of instead of having them all floating. Once we move one of these then we know where the language needs to be. The language the House put on overdose immunity was good. On Section 12 we should change ½ to 1. That is where it is everywhere else. This is just one of those catches.

Chairman K. Koppelman: The effect has to do with marijuana possession and it prohibits by ordinance, except a person operating a motor vehicle from possessing not more than 1 ounce.

Representative Nelson: Not being a defense attorney marijuana seems to wear so many different hats. When we see marijuana does the courts treat this like all forms of marijuana?

Senator Armstrong: No, marijuana and hashes and oils are treated differently. Marijuana laws are becoming less and less uniform all across the country. At least we can deal with our chapter 19. It is a fairly uniform drug statute that exists in most states.

Motion Made to Senate recede from Senate Amendments and further amend to change ½ to 1 on Section 12, line 12, page 8 by Senator Armstrong; Seconded by Rep. Satrom

Discussion:

Senator Nelson: (mike not on)

Chairman K. Koppelman: the one ounce should be defined with grams as well. Counsel can make that appropriate change.

Roll Call Vote: 6 Yes 0 No 0 Absent Carried.

Rep. Satrom: I have some concerns on how this is going to fit together. Do we have anything where we are tracking this?

Chairman K. Koppelman: Kelly can you work with Legislative counsel on 1041, 1269, 1341 and SB 2149 so see the effects of those four bills. You think one more meeting will do this on 1041. Maybe we should schedule 1041 and 1269 together again.

Adjourned.

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1269
4/12/2017
30086

Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to mandatory sentences; and to provide a penalty.,

Minutes:

Attendance: Chairman Koppelman, Rep. Satrom, Rep M. Nelson;
Senator Armstrong, Senator D. Larson, absent; Senator C. Nelson

Chairman K. Koppelman: Opened the conference committee on HB 1269. We just recessed the conference committee on HB 1041 and 1269 we are scheduling back to back because of the similarities of the two bills.

Senator Armstrong: Unless anyone has any real issues is that ½ to 1-ounce yesterday. This bill passed both chambers in a different form. The school zone bill and 1269 at least we will know where we are at to harmonize 1041.

Chairman K. Koppelman: Was the motion made acceding to the Senate Amendments? The Senate amendments wrapped what was in 2149 into 1269 so what we have before us now is the combination of 1269 and 2149 with the change we made on the last page of the bill. Maybe we should just move this bill?

Senator Armstrong: I haven't heard from anyone on the committee or the crowd that aren't comfortable with this bill moving forward. I have no more amendments to bring forward.

Chairman K. Koppelman: We do not need another motion because we have already moved on the bill and that the House has accede to the Senate Amendments and it further amended so that is our report. I will hold is and not sign it until we are done with 1041, 2149 and 1341. We are not dissolving the committee on 1269; until we have completed this stuff on the other bills.

Adjourned


2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1269
4/13/2017
30119

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to mandatory sentences; and to provide a penalty.

Minutes:

**Attendance: Chairman K. Koppelman, Rep. Satrom; Rep. M.Nelson;
Senator Armstrong, Senator D. Larson, Senator C. Nelson**

Chairman K. Koppelman: Opened the conference committee on HB 1269. We will be dissolving the conference committee on this committee. We will not officially dissolve this committee so we had already completed the action yesterday. Because we have four bills that contain similar and intersecting language.

Adjourned.

April 12, 2017

4/12/17 DG
1057

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1269

That the Senate recede from its amendments as printed on pages 1284-1289 of the House Journal and pages 1003-1008 of the Senate Journal and that Engrossed House Bill No. 1269 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 12.1-32-09.1 of the North Dakota Century Code, relating to sentencing for aggravated assault; to amend and reenact subdivision k of subsection 3 of section 12.1-23-05, subsection 5 of section 12.1-32-01, subdivision b of subsection 1 of section 12.1-32-02.1, sections 19-03.1-22.3 and 19-03.1-23, subsection 2 of section 19-03.1-23.1, section 19-03.1-23.4, paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36, subdivision e of subsection 5 of section 19-03.1-36, subsection 1 of section 19-03.1-45, and subsection 29 of section 40-05-02 of the North Dakota Century Code, relating to grading of theft offenses, illegal possession of prescription capsules, pills, or tablets, possession of marijuana, ingesting a controlled substance, and misdemeanor marijuana convictions being excluded as prior offenses for purposes of determining mandatory terms of imprisonment; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision k of subsection 3 of section 12.1-23-05 of the North Dakota Century Code is amended and reenacted as follows:

- k. The property stolen is a prescription drug as defined in section 43-15.3-01, except when the quantity stolen is five or fewer capsules, pills, or tablets.

SECTION 2. AMENDMENT. Subsection 5 of section 12.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

- 5. Class A misdemeanor, for which a maximum penalty of ~~one year's~~ imprisonment for three hundred sixty days, a fine of three thousand dollars, or both, may be imposed.

SECTION 3. AMENDMENT. Subdivision b of subsection 1 of section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

- b. The offender possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing any felony offense under subsection 1, ~~23~~, or ~~78~~ of section 19-03.1-23.

SECTION 4. A new subsection to section 12.1-32-09.1 of the North Dakota Century Code is created and enacted as follows:

4/12/17 DA
2 of 7

An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.

SECTION 5. AMENDMENT. Section 19-03.1-22.3 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.

A person who intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance, unless the substance was obtained directly from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, is guilty of a class B misdemeanor if the controlled substance is marijuana. Otherwise, the offense is a class A misdemeanor. The venue for a violation of this section exists in either the jurisdiction in which the controlled substance was ingested, inhaled, injected, or otherwise taken into the body or the jurisdiction in which the controlled substance was detected in the body of the accused.

SECTION 6. AMENDMENT. Section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23. Prohibited acts A - Mandatory terms of imprisonment and fines - Unclassified offenses - Penalties.

1. Except as authorized by this chapter, it is unlawful for anya person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a controlled substance by means of the internet, but anya person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. AnyA person who violates this subsection with respect to:
 - a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class AB felony and must be sentenced:
 - (1) For a second offense, to imprisonment for at least five ~~three~~ years.
 - (2) For a third or subsequent offense, to imprisonment for twenty ~~ten~~ years.
 - b. Any other controlled substance classified in schedule I, II, or III, or a controlled substance analog is guilty of a class B felony. Except for a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, any person found guilty under this subdivision must be sentenced:
 - (1) For a second offense, to imprisonment for at least three ~~two~~ years.

9/12/17 DM
3 of 7

- (2) For a third or subsequent offense, to imprisonment for ~~ten~~five years.
- c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:
 - (1) For a second offense, to imprisonment for at least ~~six~~three months.
 - (2) For a third offense, to imprisonment for at least ~~one year~~six months.
 - (3) For a fourth or subsequent offense, to imprisonment for ~~five~~three years.
- d. A substance classified in schedule V, is guilty of a class A misdemeanor.
- 2. A prior misdemeanor conviction under subsection 8 or a prior conviction under subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under subsections 1 and 4.
- 3. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit substance by means of the internet or any other means, or possess with intent to deliver, a counterfeit substance by means of the internet or any other means, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
 - a. ~~A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.~~
 - b. ~~Any other~~A counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
 - e.b. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
 - d.c. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
- ~~3.4.~~ For second or subsequent offenders, in addition to any other penalty imposed under this section, a person who violates this chapter, except a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:
 - a. Any~~A~~ person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school is subject to ~~an eight-year~~a four-year term of imprisonment.

- b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to imprisonment for at least ~~eight~~four years. It is not a defense that the defendant did not know the age of a person protected under this subdivision.

4.5. A person at least eighteen years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to aid or assist in the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance for the purpose of receiving consideration or payment for the manufacture or delivery of any controlled substance is guilty of a class B felony and must be sentenced:

- a. For a second or subsequent offense, to imprisonment for at least ~~five~~three years.
- b. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.

~~5.~~ A-

6. Except for a prior conviction equivalent to a misdemeanor violation of subsection 8 or a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this chapter or a law of another state or the federal government which is equivalent to an offense under this chapter committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, ~~3~~4, and ~~4~~5. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.

~~6.7.~~ It is unlawful for a person to willfully, as defined in section 12.1-02-02:

- a. Serve as an agent, intermediary, or other entity that causes the internet to be used to bring together a buyer and seller to engage in the delivery, distribution, or dispensing of a controlled substance in a manner not authorized by this chapter; or
- b. Offer to fill or refill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire.

A person who violates this subsection is guilty of a class C felony.

~~7.8.~~ a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.

b. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class C felony.

- c. If, at the time of the offense the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony, unless the offense involves one ounce [28.35 grams] or less of marijuana. ~~Any~~
- d. A person who violates this subsection regarding possession of one ounce [28.35 grams] or less of marijuana is guilty of a class B misdemeanor.
- e. A person who violates this subsection regarding possession of five or fewer capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or controlled substance analog is guilty of a class A misdemeanor.

8-9. Except as provided by section 19-03.1-45, a court may order a person who violates this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed addiction counselor. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. If ordered, the evaluation must be submitted to the court before imposing punishment for a felony violation or a misdemeanor violation. A court shall order a person who violates subdivision e of subsection 8 to undergo the drug addiction evaluation.

9-10. If a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall seal the court record of that conviction if the person is not subsequently convicted within two years of a further violation of this chapter. Once sealed, the court record may not be opened even by order of the court.

SECTION 7. AMENDMENT. Subsection 2 of section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

- 2. The offense is:
 - a. ~~A class AA felony if the violation of section 19-03.1-23 is designated as a class A felony.~~
 - b. A class A felony if the violation of section 19-03.1-23 is designated as a class B felony.
 - e.b. A class B felony if the violation of section 19-03.1-23 is designated as a class C felony.
 - d.c. A class C felony if the violation of section 19-03.1-23 is designated as a class A misdemeanor.

SECTION 8. AMENDMENT. Section 19-03.1-23.4 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23.4. Overdose prevention and immunity.

An individual is immune from criminal prosecution under sections 19-03.1-22.1, 19-03.1-22.3, 19-03.1-22.5, subsection ~~7~~ of section 19-03.1-23, subsection 3 of

4/12/17 DF
6 of 7

~~section 19-03.2-03, and section 19-03.4-03 if in good faith that individual contacted law enforcement or emergency medical services and reported that the individual was or that seeks medical assistance for another individual was in need of emergency medical assistance due to a drug overdose. To receive immunity under this section, the individual receiving immunity must have remained on the scene until assistance arrived, cooperated with emergency medical services and law enforcement personnel in the medical treatment of the reported drug overdosed individual, and the overdosed individual must have been in need of emergency medical services. The maximum number of individuals that may be immune for any one occurrence is three individuals a condition a layperson would reasonably believe to be a drug overdose requiring immediate medical assistance. Neither the individual who experiences a drug-related overdose and is in need of emergency medical assistance nor the cooperating individual seeking medical assistance may be charged or prosecuted for the criminal offenses listed in this section or for the sharing of controlled substances among those present. Immunity from prosecution under this section is not applicable for a violation under section 19-03.1-23.1 does not apply unless the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for emergency medical assistance. Good faith does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or during a lawful search.~~

SECTION 9. AMENDMENT. Paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

- (3) A conveyance is not subject to forfeiture for a violation of subsection 78 of section 19-03.1-23 or subsection 3 of section 19-03.2-03.

SECTION 10. AMENDMENT. Subdivision e of subsection 5 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

- e. Use the property, including controlled substances, imitation controlled substances, and plants forfeited under subsections 6 and 7, in enforcement of this chapter. However, in a case involving the delivery of a forfeited controlled substance by a law enforcement officer or a person acting as an agent of a law enforcement officer, no prosecution or conviction for simple possession of a controlled substance under subsection 67 of section 19-03.1-23 may be based upon the forfeited controlled substances supplied by the law enforcement officer or the officer's agent.

SECTION 11. AMENDMENT. Subsection 1 of section 19-03.1-45 of the North Dakota Century Code is amended and reenacted as follows:

- 1. If a person has pled guilty or has been found guilty of a felony violation of subsection 78 of section 19-03.1-23, if that person has not previously pled guilty or been found guilty of any offense involving the use, possession, manufacture, or delivery of a controlled substance or of any other felony offense of this or another state or the federal government, the court shall impose a period of probation up to the length authorized under section 12.1-32-06.1 with a suspended execution of a sentence of imprisonment, a sentence to probation, or an order deferring imposition of sentence.

4/12/17 dx
2 of 7

SECTION 12. AMENDMENT. Subsection 29 of section 40-05-02 of the North Dakota Century Code is amended and reenacted as follows:

29. Marijuana possession. To prohibit by ordinance any person, except a person operating a motor vehicle, from possessing not more than ~~one-half~~ one ounce [~~14.175~~28.35 grams] of marijuana, as defined by section 19-03.1-01, within the jurisdiction of a city, and to prescribe the punishment, provided the penalty assessed is subject to subsection 910 of section 19-03.1-23."

Renumber accordingly

2017 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL HB 1269 as (re) engrossed

House Judiciary Committee

- Action Taken
- HOUSE accede to Senate Amendments
 - HOUSE accede to Senate Amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Changed 1/2 to 1 on Section 12, line 12, page 8

Motion Made by: Senator Armstrong Seconded by: Rep. Satrom

Representatives	4/6	4/11	4/12	Yes	No	Senators	4/6	4/11	4/12	Yes	No
Chairman K. Koppelman:	✓	✓	✓	X		Senator Armstrong	✓	✓	✓	X	
Rep. Satrom	✓	✓	✓	X		Senator D. Larson	✓	✓		X	
Rep. M. Nelson	✓	✓	✓	X		Senator C. Nelson	✓	✓	✓	X	
						<u>Sen. OSLAND</u>			✓		
Total Rep. Vote						Total Senate Vote					

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Koppelman Senate Carrier Armstrong

LC Number 17.0633 . 0300.3 of amendment

LC Number 05000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Date: 4/13/2017
 Roll Call Vote #:

**2017 HOUSE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL HB 1269 as (re) engrossed

House Judiciary Committee

- Action Taken**
- HOUSE accede to Senate Amendments
 - HOUSE accede to Senate Amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows

 - Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: _____ Seconded by: _____

Representatives		4/13		Yes	No	Senators		4/13		Yes	No
Chairman K. Koppelman:		X				Senator Armstrong		X			
Rep. Satrom		X				Senator D. Larson		X			
Rep. M. Nelson		X				Senator C. Nelson		X			
Total Rep. Vote						Total Senate Vote					

Vote Count Yes: _____ No: _____ Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Insert LC: 17.0633.03003
House Carrier: K. Koppelman
Senate Carrier: Armstrong

REPORT OF CONFERENCE COMMITTEE

HB 1269, as engrossed: Your conference committee (Sens. Armstrong, D. Larson, Nelson and Reps. K. Koppelman, Satrom, M. Nelson) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1003-1008, adopt amendments as follows, and place HB 1269 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1284-1289 of the House Journal and pages 1003-1008 of the Senate Journal and that Engrossed House Bill No. 1269 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 12.1-32-09.1 of the North Dakota Century Code, relating to sentencing for aggravated assault; to amend and reenact subdivision k of subsection 3 of section 12.1-23-05, subsection 5 of section 12.1-32-01, subdivision b of subsection 1 of section 12.1-32-02.1, sections 19-03.1-22.3 and 19-03.1-23, subsection 2 of section 19-03.1-23.1, section 19-03.1-23.4, paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36, subdivision e of subsection 5 of section 19-03.1-36, subsection 1 of section 19-03.1-45, and subsection 29 of section 40-05-02 of the North Dakota Century Code, relating to grading of theft offenses, illegal possession of prescription capsules, pills, or tablets, possession of marijuana, ingesting a controlled substance, and misdemeanor marijuana convictions being excluded as prior offenses for purposes of determining mandatory terms of imprisonment; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision k of subsection 3 of section 12.1-23-05 of the North Dakota Century Code is amended and reenacted as follows:

- k. The property stolen is a prescription drug as defined in section 43-15.3-01, except when the quantity stolen is five or fewer capsules, pills, or tablets.

SECTION 2. AMENDMENT. Subsection 5 of section 12.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

5. Class A misdemeanor, for which a maximum penalty of ~~one year's~~ imprisonment for three hundred sixty days, a fine of three thousand dollars, or both, may be imposed.

SECTION 3. AMENDMENT. Subdivision b of subsection 1 of section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

- b. The offender possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing any felony offense under subsection 1, 23, or 78 of section 19-03.1-23.

SECTION 4. A new subsection to section 12.1-32-09.1 of the North Dakota Century Code is created and enacted as follows:

An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.

SECTION 5. AMENDMENT. Section 19-03.1-22.3 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.

A person who intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance, unless the substance was obtained directly from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, is guilty of a class B misdemeanor if the controlled substance is marijuana. Otherwise, the offense is a class A misdemeanor. The venue for a violation of this section exists in either the jurisdiction in which the controlled substance was ingested, inhaled, injected, or otherwise taken into the body or the jurisdiction in which the controlled substance was detected in the body of the accused.

SECTION 6. AMENDMENT. Section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23. Prohibited acts A - Mandatory terms of imprisonment and fines - Unclassified offenses - Penalties.

1. Except as authorized by this chapter, it is unlawful for anya person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a controlled substance by means of the internet, but anya person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. AnyA person who violates this subsection with respect to:
 - a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class AB felony and must be sentenced:
 - (1) For a second offense, to imprisonment for at least five~~three~~ years.
 - (2) For a third or subsequent offense, to imprisonment for twenty~~ten~~ years.
 - b. Any other controlled substance classified in schedule I, II, or III, or a controlled substance analog is guilty of a class B felony. Except for a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, any person found guilty under this subdivision must be sentenced:
 - (1) For a second offense, to imprisonment for at least three~~two~~ years.
 - (2) For a third or subsequent offense, to imprisonment for ten~~five~~ years.
 - c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:
 - (1) For a second offense, to imprisonment for at least six~~three~~ months.

- (2) For a third offense, to imprisonment for at least ~~one year~~six months.
 - (3) For a fourth or subsequent offense, to imprisonment for ~~five~~three years.
- d. A substance classified in schedule V, is guilty of a class A misdemeanor.
2. A prior misdemeanor conviction under subsection 8 or a prior conviction under subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under subsections 1 and 4.
3. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit substance by means of the internet or any other means, or possess with intent to deliver, a counterfeit substance by means of the internet or any other means, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
- a. ~~A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.~~
 - b. ~~Any other~~A counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
 - e.b. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
 - d.c. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
- 3-4. For second or subsequent offenders, in addition to any other penalty imposed under this section, a person who violates this chapter, except a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:
- a. ~~Any~~A person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school is subject to an ~~eight-year~~four-year term of imprisonment.
 - b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to imprisonment for at least ~~eight~~four years. It is not a defense that the defendant did not know the age of a person protected under this subdivision.
- 4-5. A person at least eighteen years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to aid or assist in the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance for the purpose of

Insert LC: 17.0633.03003
House Carrier: K. Koppelman
Senate Carrier: Armstrong

receiving consideration or payment for the manufacture or delivery of any controlled substance is guilty of a class B felony and must be sentenced:

- a. For a second or subsequent offense, to imprisonment for at least ~~five~~three years.
- b. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.

~~5.~~ A-

6. Except for a prior conviction equivalent to a misdemeanor violation of subsection 8 or a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this chapter or a law of another state or the federal government which is equivalent to an offense under this chapter committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, ~~34~~, and ~~45~~. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.

~~6-7.~~ It is unlawful for a person to willfully, as defined in section 12.1-02-02:

- a. Serve as an agent, intermediary, or other entity that causes the internet to be used to bring together a buyer and seller to engage in the delivery, distribution, or dispensing of a controlled substance in a manner not authorized by this chapter; or
- b. Offer to fill or refill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire.

A person who violates this subsection is guilty of a class C felony.

~~7-8.~~ a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.

b. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class C felony.

c. If, at the time of the offense the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony, unless the offense involves one ounce [28.35 grams] or less of marijuana. ~~Any~~

d. A person who violates this subsection regarding possession of one ounce [28.35 grams] or less of marijuana is guilty of a class B misdemeanor.

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House Carrier: K. Koppelman
Senate Carrier: Armstrong

- e. A person who violates this subsection regarding possession of five or fewer capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or controlled substance analog is guilty of a class A misdemeanor.
- 8-9. Except as provided by section 19-03.1-45, a court may order a person who violates this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed addiction counselor. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. If ordered, the evaluation must be submitted to the court before imposing punishment for a felony violation or a misdemeanor violation. A court shall order a person who violates subdivision e of subsection 8 to undergo the drug addiction evaluation.
- 9-10. If a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall seal the court record of that conviction if the person is not subsequently convicted within two years of a further violation of this chapter. Once sealed, the court record may not be opened even by order of the court.

SECTION 7. AMENDMENT. Subsection 2 of section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

2. The offense is:
- a. ~~A class AA felony if the violation of section 19-03.1-23 is designated as a class A felony.~~
 - b. A class A felony if the violation of section 19-03.1-23 is designated as a class B felony.
 - e.b. A class B felony if the violation of section 19-03.1-23 is designated as a class C felony.
 - d.c. A class C felony if the violation of section 19-03.1-23 is designated as a class A misdemeanor.

SECTION 8. AMENDMENT. Section 19-03.1-23.4 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23.4. Overdose prevention and immunity.

An individual is immune from criminal prosecution under sections 19-03.1-22.1, 19-03.1-22.3, 19-03.1-22.5, subsection ~~7~~8 of section 19-03.1-23, subsection 3 of section 19-03.2-03, and section 19-03.4-03 if in good faith that individual contacted law enforcement or emergency medical services and reported that the individual was or that seeks medical assistance for another individual was in need of emergency medical assistance due to a drug overdose. To receive immunity under this section, the individual receiving immunity must have remained on the scene until assistance arrived, cooperated with emergency medical services and law enforcement personnel in the medical treatment of the reported drug overdosed individual, and the overdosed individual must have been in need of emergency medical services. The maximum number of individuals that may be immune for any one occurrence is three individuals a condition a layperson would reasonably believe to be a drug overdose requiring immediate medical assistance. Neither the individual who experiences a drug-related overdose and is in need of emergency medical assistance nor the cooperating individual seeking medical assistance may be charged or prosecuted for the criminal offenses listed in this section or for the

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sharing of controlled substances among those present. Immunity from prosecution under this section is not applicable for a violation under section 19-03.1-23.1 does not apply unless the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for emergency medical assistance. Good faith does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or during a lawful search.

SECTION 9. AMENDMENT. Paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

- (3) A conveyance is not subject to forfeiture for a violation of subsection 78 of section 19-03.1-23 or subsection 3 of section 19-03.2-03.

SECTION 10. AMENDMENT. Subdivision e of subsection 5 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

- e. Use the property, including controlled substances, imitation controlled substances, and plants forfeited under subsections 6 and 7, in enforcement of this chapter. However, in a case involving the delivery of a forfeited controlled substance by a law enforcement officer or a person acting as an agent of a law enforcement officer, no prosecution or conviction for simple possession of a controlled substance under subsection 67 of section 19-03.1-23 may be based upon the forfeited controlled substances supplied by the law enforcement officer or the officer's agent.

SECTION 11. AMENDMENT. Subsection 1 of section 19-03.1-45 of the North Dakota Century Code is amended and reenacted as follows:

1. If a person has pled guilty or has been found guilty of a felony violation of subsection 78 of section 19-03.1-23, if that person has not previously pled guilty or been found guilty of any offense involving the use, possession, manufacture, or delivery of a controlled substance or of any other felony offense of this or another state or the federal government, the court shall impose a period of probation up to the length authorized under section 12.1-32-06.1 with a suspended execution of a sentence of imprisonment, a sentence to probation, or an order deferring imposition of sentence.

SECTION 12. AMENDMENT. Subsection 29 of section 40-05-02 of the North Dakota Century Code is amended and reenacted as follows:

29. Marijuana possession. To prohibit by ordinance any person, except a person operating a motor vehicle, from possessing not more than ~~one-half~~one ounce [~~14.175~~28.35 grams] of marijuana, as defined by section 19-03.1-01, within the jurisdiction of a city, and to prescribe the punishment, provided the penalty assessed is subject to subsection 910 of section 19-03.1-23."

Renumber accordingly

Engrossed HB 1269 was placed on the Seventh order of business on the calendar.

2017 TESTIMONY

HB 1269

#1
1269
1-23-17

Testimony to House Judiciary Committee relative to HB 1269 and 1270.

My name is Gary Euren. I recently retired from the Cass County State's Attorney Office after eleven years. During that time my primary work concentration was drug crimes. I also was the State's Attorney representative on the Adult drug court.

For approximately 1 ½ years I was the designated methamphetamine attorney under a DOJ grant for special enforcement of methamphetamine policing and prosecuting. I have attended numerous seminars and workshops regarding drug enforcement and prosecution and have provided drug training to law enforcement and prosecutors.

Prior to working at the Cass County State's Attorney Office, I was a part time municipal prosecutor in Grand Forks for fourteen years. My primary work concentration was DUI prosecution. During the first eight years of practice, my primary concentration was criminal defense including as a public defender. Finally, I have taught criminal law classes for the Criminal Justice program at the University of North Dakota (3 years) and this semester is 5 of 6 years for the Paralegal program at Minnesota State University Moorhead.

I had proposed several changes to the North Dakota Century Code regarding drug violations to Representative Chris Olson and Senator Judy Lee. Some of those proposed changes are incorporated in HB 1269 and HB 1270. My comments herein are a result of my experience and the recent national and state discussion regarding reducing prison populations. It is my belief that these proposed changes will help reduce the North Dakota State Penitentiary population, provide prosecutors with more discretion in charging and sentencing recommendations, and provide judges with more discretion in sentencing. I also believe these changes will give more perceived and actual fairness and justice to the criminal justice system.

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There are three basic proposed changes in this bill.

The first allows for what is called a misdemeanor by disposition in sentencing in certain situations which currently prohibit such a sentence. A misdemeanor by disposition involves:

1. A plea of guilty to or conviction for a felony;
2. A sentence that is one year or less; and
3. Successful completion of supervised probation;
4. Which will result in a permanent record of a misdemeanor instead of a felony.

For example – a sentence of one year, first to serve 90 days, two years supervised probation. If the defendant serves the jail time, pays all fines and fees, complies with all terms of probation, and is deemed to have successfully completed probation, the BCI will change the permanent criminal record to conviction of a misdemeanor, rather than a felony. This can be of great benefit to persons convicted of felonies because it is very difficult to obtain employment and housing with a felony conviction. This benefit is normally only recommended by prosecutors and granted by judges when the defendant has no or a very minor criminal record and is not a major drug dealer. At the present time, the only options available to prosecutors and judges are reduction of the charge to simple possession (to be able to take advantage of the misdemeanor by disposition), a deferred imposition of sentence (which becomes a dismissal of the charges if the sentence is successfully completed), continuing with the felony sentencing, or outright dismissal.

Currently, this benefit in sentencing is not available for a person convicted of delivering, manufacturing, or possessing with intent to deliver or manufacture any controlled substance. This bill, in its present state, allows for this benefit only for delivery of Schedule IV controlled substances. My initial recommendation was to apply this benefit to the delivery, manufacture, or possession with intent to deliver or manufacture all controlled substances. I still believe that it should apply to all scheduled controlled substances because: the vast majority of convictions in this category are Schedule I, II, and III controlled substances and in many cases these convictions are of persons

who are minor drug dealers, and/or have less significant criminal records. Not allowing the use of this tool for these convictions will result in little change to the prison population in North Dakota nor will it provide more fairness in sentencing and the way sentencing is perceived. Prosecutors and judges will not be compelled to use this tool but will have another option when deciding how to sentence and may be helpful in resolving more cases without trial and/or getting useful information to convict major drug dealers.

The second change involves lowering the mandatory, minimum sentences for charges of delivery, manufacturing, or possession with intent to deliver or manufacturing controlled substances with prior drug convictions. At the present time the statutes provide that the mandatory minimum with two or more prior convictions will result in a sentence that is also the maximum penalty available. The length of such sentences vary with the schedule of the controlled substance involved, resulting in three changes to the statute.

One benefit of this change will be more discretion to the prosecutors and judges. At the present time, if a prosecutor charges for delivery, manufacturing, or possession with intent to deliver or manufacture with two or more prior convictions, there are no options for sentencing except the mandatory/minimum (maximum) or amending the charging document to allege one or no prior convictions. Often minor drug dealers have prior convictions for simple possession of controlled substances but not for delivery, etc. They do, however, often have information that will help convict major drug dealers. In order to get cooperation, the prosecutor may need to amend out one or more prior conviction. With this provision, the prosecutor can recommend the maximum, but offer a lesser recommendation for the cooperation without having to amend the charging document. Thus another benefit is that charging and sentencing in these cases will be more transparent and honest.

The third change involves removing prior misdemeanor convictions for use in enhancing a sentence. This provision is important for transparency, honesty and fairness in the criminal justice system. At the present time, a charge of delivery,

manufacturing, or possession with intent to deliver or manufacture can have a mandatory, minimum sentence that is also the maximum possible sentence if there are two prior convictions for B misdemeanor possession of marijuana. This is patently unfair and can cause cynicism and distrust of the criminal justice system.

HB 1270

This bill will adjust an inequity in the enhancement provisions.

It addresses the issue that it takes fifty grams of cocaine base to enhance an A felony to a AA felony while it only takes five grams of crack cocaine to enhance. This change will increase the amount needed for enhancement of crack cocaine to the fifty grams that is necessary with cocaine base. There is a racial aspect to the disparity this causes in sentencing because it is a drug primarily used and delivered by blacks. This has been the subject of a national debate and several states have already adjusted their laws in this manner.

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3/6/17

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1269

Page 1, line 1, add "subsection 9 of section 12.1-32-02 and" after the word "reenact"

Page 1, line 4, insert "SECTION 1. AMENDMENT. Subsection 9 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

9. A person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor upon successful completion of the term of imprisonment and a term of probation imposed as a part of the sentence. ~~This subsection does not apply to a person convicted of violating subdivision a, b, or c or b of subsection 1 of section 19-03.1-23.~~

3/28/17

(1)

HB 1269

17.0633.03001
Title.

Prepared by the Legislative Council staff for
Senator Armstrong
March 27, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1269

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 12.1-32-09.1 of the North Dakota Century Code, relating to sentencing for aggravated assault; to amend and reenact subdivision k of subsection 3 of section 12.1-23-05, subsection 5 of section 12.1-32-01, subdivision b of subsection 1 of section 12.1-32-02.1, sections 19-03.1-22.3 and 19-03.1-23, subsection 2 of section 19-03.1-23.1, section 19-03.1-23.4, paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36, subdivision e of subsection 5 of section 19-03.1-36, subsection 1 of section 19-03.1-45, and subsection 29 of section 40-05-02 of the North Dakota Century Code, relating to grading of theft offenses, illegal possession of prescription capsules, pills, or tablets, possession of marijuana, ingesting a controlled substance, and misdemeanor marijuana convictions being excluded as prior offenses for purposes of determining mandatory terms of imprisonment; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision k of subsection 3 of section 12.1-23-05 of the North Dakota Century Code is amended and reenacted as follows:

- k. The property stolen is a prescription drug as defined in section 43-15.3-01, except when the quantity stolen is five or fewer capsules, pills, or tablets.

SECTION 2. AMENDMENT. Subsection 5 of section 12.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

5. Class A misdemeanor, for which a maximum penalty of ~~one year's~~ imprisonment for three hundred sixty days, a fine of three thousand dollars, or both, may be imposed.

SECTION 3. AMENDMENT. Subdivision b of subsection 1 of section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

- b. The offender possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing any felony offense under subsection 1, ~~23~~, or ~~78~~ of section 19-03.1-23.

SECTION 4. A new subsection to section 12.1-32-09.1 of the North Dakota Century Code is created and enacted as follows:

An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.

SECTION 5. AMENDMENT. Section 19-03.1-22.3 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.

A person who intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance, unless the substance was obtained directly from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, is guilty of a class B misdemeanor if the controlled substance is marijuana. Otherwise, the offense is a class A misdemeanor. The venue for a violation of this section exists in either the jurisdiction in which the controlled substance was ingested, inhaled, injected, or otherwise taken into the body or the jurisdiction in which the controlled substance was detected in the body of the accused.

SECTION 6. AMENDMENT. Section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23. Prohibited acts A - Mandatory terms of imprisonment and fines - Unclassified offenses - Penalties.

1. Except as authorized by this chapter, it is unlawful for anya person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a controlled substance by means of the internet, but anya person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. AnyA person who violates this subsection with respect to:
 - a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class AB felony and must be sentenced:
 - (1) For a second offense, to imprisonment for at least five years.
 - (2) For a third or subsequent offense, to imprisonment for twenty years.
 - b. Any other controlled substance classified in schedule I, II, or III, or a controlled substance analog is guilty of a class B felony. Except for a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, any person found guilty under this subdivision must be sentenced:
 - (1) For a second offense, to imprisonment for at least three years.
 - (2) For a third or subsequent offense, to imprisonment for ten years.
 - c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:

- (1) For a second offense, to imprisonment for at least ~~six~~three months.
 - (2) For a third offense, to imprisonment for at least ~~one year~~six months.
 - (3) For a fourth or subsequent offense, to imprisonment for ~~five~~three years.
- d. A substance classified in schedule V, is guilty of a class A misdemeanor.
2. A prior misdemeanor conviction under subsection 8 or a prior conviction under subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under subsections 1 and 4.
 3. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit substance by means of the internet or any other means, or possess with intent to deliver, a counterfeit substance by means of the internet or any other means, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
 - a. ~~A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.~~
 - b. ~~Any other~~A counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
 - e.b. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
 - d.c. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
 - 3.4. For second or subsequent offenders, in addition to any other penalty imposed under this section, a person who violates this chapter, except a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:
 - a. ~~Any~~A person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school is subject to an ~~eight year~~four-year term of imprisonment.
 - b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to imprisonment for at least ~~eight~~four years. It is not a defense that the defendant did not know the age of a person protected under this subdivision.

4.5. A person at least eighteen years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to aid or assist in the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance for the purpose of receiving consideration or payment for the manufacture or delivery of any controlled substance is guilty of a class B felony and must be sentenced:

- a. For a second or subsequent offense, to imprisonment for at least ~~five~~three years.
- b. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.

~~5.~~ A-

6. Except for a prior conviction equivalent to a misdemeanor violation of subsection 8 or a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this chapter or a law of another state or the federal government which is equivalent to an offense under this chapter committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, ~~34~~, and 45. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.

~~6.7.~~ It is unlawful for a person to willfully, as defined in section 12.1-02-02:

- a. Serve as an agent, intermediary, or other entity that causes the internet to be used to bring together a buyer and seller to engage in the delivery, distribution, or dispensing of a controlled substance in a manner not authorized by this chapter; or
- b. Offer to fill or refill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire.

A person who violates this subsection is guilty of a class C felony.

7.8. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.

b. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class C felony.

c. If, at the time of the offense the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony, unless the offense involves one ounce [28.35 grams] or less of marijuana. ~~Any~~

d. A person who violates this subsection regarding possession of one ounce [28.35 grams] or less of marijuana is guilty of a class B misdemeanor.

e. A person who violates this subsection regarding possession of five or fewer capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or controlled substance analog is guilty of a class A misdemeanor.

~~8-9.~~ Except as provided by section 19-03.1-45, a court may order a person who violates this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed addiction counselor. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. If ordered, the evaluation must be submitted to the court before imposing punishment for a felony violation or a misdemeanor violation. A court shall order a person who violates subdivision e of subsection 8 to undergo the drug addiction evaluation.

~~9-10.~~ If a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall seal the court record of that conviction if the person is not subsequently convicted within two years of a further violation of this chapter. Once sealed, the court record may not be opened even by order of the court.

SECTION 7. AMENDMENT. Subsection 2 of section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

2. The offense is:

- a. ~~A class AA felony if the violation of section 19-03.1-23 is designated as a class A felony.~~
- ~~b.~~ A class A felony if the violation of section 19-03.1-23 is designated as a class B felony.
- ~~e.b.~~ A class B felony if the violation of section 19-03.1-23 is designated as a class C felony.
- ~~d.c.~~ A class C felony if the violation of section 19-03.1-23 is designated as a class A misdemeanor.

SECTION 8. AMENDMENT. Section 19-03.1-23.4 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23.4. Overdose prevention and immunity.

An individual is immune from criminal prosecution under sections 19-03.1-22.1, 19-03.1-22.3, 19-03.1-22.5, subsection 7 of section 19-03.1-23, subsection 3 of section 19-03.2-03, and section 19-03.4-03 if in good faith that individual contacted law enforcement or emergency medical services and reported that the individual was or that seeks medical assistance for another individual ~~was~~ in need of emergency medical assistance due to a drug overdose. To receive immunity under this section, the individual receiving immunity must have remained on the scene until assistance arrived, cooperated with ~~emergency medical services and law enforcement personnel~~ in the medical treatment of the reported drug overdosed individual, and the overdosed

individual must have been in need of emergency medical services. The maximum number of individuals that may be immune for any one occurrence is three individuals a condition a layperson would reasonably believe to be a drug overdose requiring immediate medical assistance. Neither the individual who experiences a drug-related overdose and is in need of emergency medical assistance nor the cooperating individual seeking medical assistance may be charged or prosecuted for the criminal offenses listed in this section or for the sharing of controlled substances among those present. Immunity from prosecution under this section is not applicable for a violation under section 19-03.1-23.1 does not apply unless the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for emergency medical assistance. Good faith does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or during a lawful search.

SECTION 9. AMENDMENT. Paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

- (3) A conveyance is not subject to forfeiture for a violation of subsection 78 of section 19-03.1-23 or subsection 3 of section 19-03.2-03.

SECTION 10. AMENDMENT. Subdivision e of subsection 5 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

- e. Use the property, including controlled substances, imitation controlled substances, and plants forfeited under subsections 6 and 7, in enforcement of this chapter. However, in a case involving the delivery of a forfeited controlled substance by a law enforcement officer or a person acting as an agent of a law enforcement officer, no prosecution or conviction for simple possession of a controlled substance under subsection 67 of section 19-03.1-23 may be based upon the forfeited controlled substances supplied by the law enforcement officer or the officer's agent.

SECTION 11. AMENDMENT. Subsection 1 of section 19-03.1-45 of the North Dakota Century Code is amended and reenacted as follows:

1. If a person has pled guilty or has been found guilty of a felony violation of subsection 78 of section 19-03.1-23, if that person has not previously pled guilty or been found guilty of any offense involving the use, possession, manufacture, or delivery of a controlled substance or of any other felony offense of this or another state or the federal government, the court shall impose a period of probation up to the length authorized under section 12.1-32-06.1 with a suspended execution of a sentence of imprisonment, a sentence to probation, or an order deferring imposition of sentence.

SECTION 12. AMENDMENT. Subsection 29 of section 40-05-02 of the North Dakota Century Code is amended and reenacted as follows:

29. Marijuana possession. To prohibit by ordinance any person, except a person operating a motor vehicle, from possessing not more than one-half ounce [14.175 grams] of marijuana, as defined by section 19-03.1-01, within the jurisdiction of a city, and to prescribe the punishment, provided the penalty assessed is subject to subsection 910 of section 19-03.1-23."

Renumber accordingly