

2017 HOUSE JUDICIARY

HB 1341

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1341
1/25/2017
27382

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the elimination of enhanced penalties for manufacturing, delivering, or possessing controlled substances near schools.

Minutes:

1

Chairman K. Koppelman: Opened the hearing on HB 1341.

Rep. Rick C. Becker: Introduced the bill. (#1) Went over the handouts and bill (1:00-5:00) The area is so large it is highly likely that you are going to be within 1000 feet of something. The penalty of a specific crime should be what we feel is appropriate. Went over the handout on the goggle map and there seems to be a problem with this bill and how to make it workable. (6:04-8:27) I am offering an amendment if it seems somehow distasteful to take schools out because we want to protect our children. To protect our children is already there by an adult selling to a minor. This is a geographic thing.

Ryan Sanburn, an Attorney, Minot, ND: We are coming out for this bill. I had clients who have driven by schools to get home and they get pulled over and they find drugs on them they get charged with possession of drugs within 1000 feet of school. It just doesn't apply to people living near the school.

Chairman K. Koppelman: In your practice of criminal defense law have you have a lot of cases where the aggravating factor is actually applied. How is it working out in the real world?

Ryan Sanburn: Usually it is a threat and it is a big factor when it comes to these. You don't have to get any money for it so if you and your buddy have a joint and you provide the joint it you are technically delivering. So if you are in your house near a school you are delivering a joint to someone within 1000 feet of the school so it doesn't seem like it matches.

Opposition: None

Neutral: None

Hearing closed.


2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1341
1/25/2017
27421

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the elimination of enhanced penalties for manufacturing, delivering, or possessing controlled substances near schools.

Minutes:

Chairman K. Koppelman: Opened the meeting on HB 1341.

Motion made to move Rep. Becker's proposed amendment 17.0169.02001 by Representative Maragos: Seconded by Representative Roers Jones:

Chairman K. Koppelman: To clarify what Rep. Becker said is that if we were not comfortable with the bill as written which takes out proximity to a school he would recommend the amendment which takes out the proximity issue, but does leave the potential for enhancing the penalty if it occurs on school grounds. That amendment makes sense.

Discussion:

Representative Vetter: This bill would eliminate proximity thing?

Representative Hanson: In the proposed amendment where we are saying it eliminates the area but it leaves in day care, elementary and high school as an aggravating offense if on the premises. So it would not be an aggravating offense. Was higher ed excluded from that list.

Chairman K. Koppelman: College campuses are an adult.

Representative Klemin: We are talking about somebody that has a second or third offense. I have a problem giving them a slap on the wrist. I don't like changing the age to 21 years of age. I don't think it is appropriate.

Chairman K. Koppelman: Is there statues already existing on this?

Voice vote carried.

Representative Paur: Line 23 & 24 does not sound like a slap on the wrist to me or am I reading it wrong.

Representative Klemin: You are reading it wrong with the change here.

Chairman K. Koppelman: This bill has to do with confidential informative issue that Rep. Becker mentioned in introducing the bill. We want to look at the practical effect of these. That is why I asked the question as to whether these are typically charged and people are sentenced to this or whether they are used as a club. We were told they are usually used to entice informatics or flee bargaining.

Representative Roers Jones: The reason I am supportive of this over the school thing is it takes out that subjective test and it applies the same penalty that was applied in the subjective distance test to any delivery of drugs to a minor. We are targeting the same problem as selling drugs to kids; we are just taking away the subjective distance test and that is why I don't have a problem with this bill.

**Do Pass As Amended Motion Made to move the amendment by Rep. Maragos;
Seconded by Rep. Simons**

Discussion:

Representative Klemin: You must recognize that it was going to apply to the controlled substances and not to marijuana.

Roll Call Vote: 12 Yes 3 No 0 Absent Carrier: Rep. Blum

Closed.

1/25/17 DA

17.0169.02001
Title.03000

Prepared by the Legislative Council staff for
Representative Rick C. Becker
January 24, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1341

Page 2, line 12, remove the overstrike over "~~Except as otherwise provided~~"

Page 2, line 13, remove the overstrike over "~~in this subsection, any~~"

Page 2, line 13, remove "Any"

Page 2, line 14, remove the overstrike over "~~If, at the time of the offense, the person is in or on~~"

Page 2, line 15, remove the overstrike over "~~the real property comprising a public or private elementary or~~"

Page 2, line 16, remove the overstrike over "~~secondary school~~"

Page 2, line 16, remove the overstrike over "~~, the person is~~"

Page 2, line 17, remove the overstrike over "~~guilty of a class B felony, unless the offense involves~~"

Page 2, line 18, remove the overstrike over "~~marijuana. Any person who violates this subsection regarding possession~~"

Page 2, line 19, remove the overstrike over "~~of marijuana is guilty of a class B misdemeanor.~~"

Page 2, line 24, remove the overstrike over "~~The offense involved the manufacture, delivery, or possession, with intent to~~"

Page 2, line 25, remove the overstrike over "~~manufacture or deliver a controlled substance in or on~~"

Page 2, line 26, remove the overstrike over "~~the real property comprising a child care or preschool~~"

Page 2, line 27, remove the overstrike over "~~facility, public or private elementary or secondary school,~~"

Page 2, line 29, overstrike "The" and insert immediately thereafter "the"

Page 2, line 30, after the first "offense" insert an underscored comma

Renumber accordingly

2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1341

House Judiciary Committee

Subcommittee

Amendment LC# or Description: Section Amend. 17-0169.02001

- 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. Roers Jones

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 _____

*voice
 vote
 carried*

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

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1341**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0149.02001

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. Simon

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) 12 No 3

Absent 0

Floor Assignment : Rep. Blewett

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

REPORT OF STANDING COMMITTEE

HB 1341: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1341 was placed on the Sixth order on the calendar.

Page 2, line 12, remove the overstrike over "~~Except as otherwise provided~~"

Page 2, line 13, remove the overstrike over "~~in this subsection, any~~"

Page 2, line 13, remove "Any"

Page 2, line 14, remove the overstrike over "~~If, at the time of the offense, the person is in or on~~"

Page 2, line 15, remove the overstrike over "~~the real property comprising a public or private elementary or~~"

Page 2, line 16, remove the overstrike over "~~secondary school~~"

Page 2, line 16, remove the overstrike over "~~, the person is~~"

Page 2, line 17, remove the overstrike over "~~guilty of a class B felony, unless the offense involves~~"

Page 2, line 18, remove the overstrike over "~~marijuana. Any person who violates this subsection regarding possession~~"

Page 2, line 19, remove the overstrike over "~~of marijuana is guilty of a class B misdemeanor.~~"

Page 2, line 24, remove the overstrike over "~~The offense involved the manufacture, delivery, or possession, with intent to~~"

Page 2, line 25, remove the overstrike over "~~manufacture or deliver a controlled substance in or on~~"

Page 2, line 26, remove the overstrike over "~~the real property comprising a child care or preschool~~"

Page 2, line 27, remove the overstrike over "~~facility, public or private elementary or secondary school,~~"

Page 2, line 29, overstrike "The" and insert immediately thereafter "the"

Page 2, line 30, after the first "offense" insert an underscored comma

Renumber accordingly

2017 SENATE JUDICIARY

HB 1341

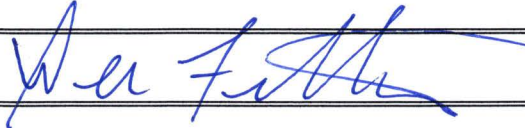
2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1341
3/15/2017
29236

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the elimination of enhanced penalties for manufacturing, delivering, or possessing controlled substances near schools.

Minutes:

Testimony attached #

1

Chairman Armstrong called the committee to order on HB 1341. All committee members were present.

Rick Becker, North Dakota State Representative District 7 (0:10 – 7:40), introduced and testified in support of the bill. (see attachment 1)

Senator Larson (7:45): “We have another bill that we passed that talks about 500 ft. for a dangerous sex offender within a school perimeter. I know the 1000 ft. is intended to make it a broader area, but the 500ft does seem to bring that in quite a way so it’s really a lot closer to the school itself. The intent of this part of law is to get at people trying selling to drugs to kids at school. Do you have any concerns about amending it from 1000 ft. to 500 ft.”?

Chairman Armstrong: “This bill takes 1,000 ft. out.”

Senator Larson: “Right. I know.”

Representative Becker: “I think it’s less good to put 500 ft. than it would be to completely remove it. What I want to reiterate is that the means to protect kids is already there with an aggravating offense when an adult sells drugs to a minor, and the way it is now if you were to go on to school property, that’s another aggravating offense. The point of the bill is that there is already an aggravated offense by selling to a minor, the amount of the feet that is away from the school is an arbitrary distance.”

Senator Larson (10:40): “We’re hearing in other bills about young adults up until the age of 24-26 don’t have their pre-frontal cortex fully developed so they shouldn’t be held to the same account as adults. Do you think there’s good reason of removing those people from this list?”

Representative Becker: "I do think that's a good reason. The question is, should a kid who got in trouble at home be treated different than the kid who got in trouble in his dorm room? My answer would be no, they are equally bad decisions."

Chairman Armstrong: "If I'm within 1,000 ft. of a school at 2 am in the summer and I sell drugs to someone who lives next to me, would this enhancement still apply regardless of no kids around and school is on recess until the fall?"

Representative Becker: "Yes."

Chairman Armstrong closed the hearing on HB 1341.

No motions were made.

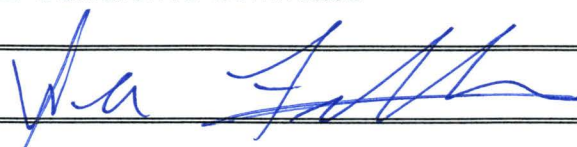
2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1341 Committee Work
3/27/2017
29706

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the elimination of enhanced penalties for manufacturing, delivering, or possessing controlled substances near schools.

Minutes:

Attachments

1

Chairman Armstrong began the discussion on HB 1341. All committee members were present.

Chairman Armstrong's proposed amendment was reviewed. (see attachment 1)

Chairman Armstrong: "There's a lot of things in here that I think makes sense. I presented an amendment because I think that this bill takes things a little too far, too fast. It always bothered me that you have 1000 feet from a school and there's no nexus to activity on school grounds. That being said, I also don't want drug dealers outside of a school program. I believe this amendment fixes these issues. I talked to BCI and they agree with the bill."

Senator Nelson (4:35): "In some areas, the school district is shared with the park district. So you have park activities going on over the weekends and all summer long. So what happens with that?"

Chairman Armstrong: "That would be up to the prosecutor if they wanted to push it, then that would be a question of fact for the jury."

Senator Nelson: "Could the local government override that?"

Chairman Armstrong: "No, the locals can't touch felony law in the Century Code."

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

Senator Nelson: "So you're still saying that this is only for public and private elementary schools, secondary schools, and pre-schools, but not technical schools, colleges, and universities?"

Chairman Armstrong: "Correct."

Senator Myrdal (9:10): "So on page 2, line 16, it says to remove the overstrike. So that is clearly high school kids?"

Chairman Armstrong: "Yes."

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

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

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

Senator Osland carried the bill.

Chairman Armstrong ended the discussion on HB 1341.

OK
3/27/17

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1341

- Page 1, line 2, remove "the"
- Page 1, line 3, remove "elimination of"
- Page 1, line 4, after "schools" insert "; and to provide a penalty"
- Page 2, line 14, overstrike ", at the time of"
- Page 2, line 14, after "offense" insert "is committed during the hours of six a.m. to ten p.m. when school is in session or during a regularly school-sponsored activity and"
- Page 2, line 14, remove the overstrike over "~~, or within~~"
- Page 2, line 15, after the overstruck closing bracket insert "three hundred feet [91.4 meters]"
- Page 2, line 15, remove the overstrike over "of"
- Page 2, line 16, remove the overstrike over "~~or a public career and technical education school~~"
- Page 2, line 24, after "offense" insert "was committed during the hours of six a.m. to ten p.m. when school is in session or during a regularly school-sponsored activity and"
- Page 2, line 25, remove the overstrike over "~~, or within~~"
- Page 2, line 26, after the overstruck closing bracket insert "three hundred feet [91.4 meters]"
- Page 2, line 26, remove the overstrike over "of,"
- Page 2, line 27, remove the overstrike over "~~public career and~~"
- Page 2, remove the overstrike over line 28
- Page 2, line 30, replace the underscored comma with an underscored semicolon
- Renumber accordingly

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1341**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0169.3002

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 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 _____

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

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1341**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0169.3002

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 Luick 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 Senator Osland

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

REPORT OF STANDING COMMITTEE

HB 1341, 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 1341 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "the"

Page 1, line 3, remove "elimination of"

Page 1, line 4, after "schools" insert "; and to provide a penalty"

Page 2, line 14, overstrike ", at the time of"

Page 2, line 14, after "offense" insert "is committed during the hours of six a.m. to ten p.m. when school is in session or during a regularly school-sponsored activity and"

Page 2, line 14, remove the overstrike over "~~, or within~~"

Page 2, line 15, after the overstruck closing bracket insert "three hundred feet [91.4 meters]"

Page 2, line 15, remove the overstrike over "of"

Page 2, line 16, remove the overstrike over "~~or a public career and technical education school~~"

Page 2, line 24, after "offense" insert "was committed during the hours of six a.m. to ten p.m. when school is in session or during a regularly school-sponsored activity and"

Page 2, line 25, remove the overstrike over "~~, or within~~"

Page 2, line 26, after the overstruck closing bracket insert "three hundred feet [91.4 meters]"

Page 2, line 26, remove the overstrike over "of,"

Page 2, line 27, remove the overstrike over "~~public career and~~"

Page 2, remove the overstrike over line 28

Page 2, line 30, replace the underscored comma with an underscored semicolon

Re-number accordingly

2017 CONFERENCE COMMITTEE

HB 1341

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1341
4/10/2017
30014

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to enhanced penalties for manufacturing, delivering, or possessing controlled substances near schools; and to provide a penalty.

Minutes:

Representative Paur: Opened the conference committee on HB 1341.

Attendance: Rep. Paur; Rep. Blum; Rep. Hanson; Senator Armstrong; Senator D. Larson; Senator C. Nelson.

Representative Paur: The Senate changed two parts of the bill; trafficking and possession. Explain why you put that time in there?

Senator Armstrong: The Senate wasn't comfortable completely removing from the schools; so if we were going to put some distance back in we wanted to create a nexus between the schools being in session and that being the reason for the enhancement. At 1000 feet in my home town there are low income apartments that set behind St. Wenceslaus Grade School and at 2 AM if one member of those apartments is selling to another member they are within 1000' of the school. So the enhancement triggers. If we weren't going to get rid of the distance completely we put to create a nexus between school being in session and the enhancement so we picked 6PM to 10PM just for whatever reason and during a regularly scheduled school activity. We heard the enhancement gets triggered at July at 2AM in the morning and didn't make sense to us. We just put it back and then put 300' in. the reason the public career and technical education schools is because high school kids actually attend those.

Representative Paur: No, you put colleges back in Section 3; you put in public and private back in.

Senator Armstrong: No, that whole thing should be out. I like the bill as we originally got it. I just thought there was so much good stuff in this bill I didn't want to lose it over something

as trivial as 300' from the grade school. Other's on the committee did not want to completely get rid of the school zones.

Representative Paur: I still don't see the time deal.

Senator Larson: It seemed like a better way to put those times in rather than saying too many flexible time tables. Senator Armstrong said he had a case at 2AM at the playground they meet to do a drug exchange. That wasn't during school hours.

Senator Armstrong: Students and teachers and the people who are dealing with schools being in school and the enhancement trigger versus just a blanket. I don't care about the hours. If you have statutorily defined time, then not everything becomes a question of fact when you are arguing about it.

Representative Paur: Doesn't this apply in July?

Senator Armstrong: No. When schools are in session? That would be a question of fact. Between 6PM and 10PM would be there. We just put one in. you could make a very good argument that 6AM to 5PM makes more sense. Drug distributors usually aren't early risers anyway,

Representative Hanson: I understand the premise of putting the hours in there. I would suggest if we keep the hours in there we put it at 10PM. If we are going to have a perimeter at school, it is good to have 300' on there. I do have concerns about including the career and technical education school. I don't know if that is necessary. I would not mind if that was taken out.

Senator Armstrong: If you are going to get rid of 1000' completely, then a repeal might make more sense because it is already an enhancement to sell the students. So if you are going to get rid of it completely you are saying on school property to students it seems redundant. A repeal makes more sense. All we are dealing with are enhancements. This is all still a crime.

Representative Hanson: I think the 300' makes sense. Minnesota also has this.

Representative Paur: Under Section 2; a person can be driving past a school with a little amount of cocaine in the car; gets stopped for speeding and add 5 years and \$10,000 to the fine. I can see that 300' or larger, but just the possession; does that ring a bell?

Senator Armstrong: We have to follow 1041 as well. If we are going to reduce it there, then we need to be sure we are the same. The difference between a C felony and B felony; what you care about is the word felony. If you get caught with a tiny amount of cocaine you are going to get a 3-year deferred imposition of sentence with a mandatory addiction evaluation and it will go off your record if you do everything right. Whether it is a B felony or a C felony. If that whole section came out for possession and we just dealt with dealing I would be completely comfortable with that. Possessing drugs on school grounds should be something you should consider. Especially if you get the colleges out of it. That is why we like the bill because the enhancement for a college kid being on a college campus seemed

to be counterproductive for dealing with our young adults and possession charges. Distribution was our concern. The dangers that occur with that activity too. If you get rid of Section 2, then the language should come out. Then the enhancement should just go away. As opposed to on school grounds.

Representative Paur: How about public career and technical education schools?

Senator Larson: We have heard a lot of a juvenile prefrontal cortex not being completely developed; so they are more apt to make snap decisions and not use good judgement and that is why we shouldn't hold them accountable. We have these kids going to these schools and we shouldn't have to worry about some kid selling them drugs in that setting. That is still considered high school?

Representative Paur: How many go there?

Senator Larson: That is only high school students that goes there at that school setting. That is for technical kids of education.

Representative Paur: So if a high school kid is caught with drugs; then an 18-year-old senior it will move up to a class B felony. Are you talking about dealing?

Senator Larson: I don't want us to back off on this so they do realize that it is more worth the risk.

Rep. Blum: Now that it is clarified that they were not intended to be in there.

Senator Nelson: I agree with Rep. Blum?

Senator Armstrong: I would ask we hold this bill so that it coincides with 1041 and 1269. Going to need the language consistent on what we do with the other bills as well. I am really concerned about a C to a B and that type of language and dealing with those types of things.

Representative Paur: Do you think the language should be identical between trafficking and possession?

Senator Armstrong: My deal with this is trafficking. The word felony is what matters to me. There are no minimum mandatories attached to possession so it doesn't make a ton of sense for the enhancement.

Representative Paur: On Section 2 would you be amiable to consider taking out the 300'. I am not sure about the career and public school. They will still receive a felony.

Senator Armstrong: I am not sure about the public career and technical school, but I want to talk to my committee first.

Senator Larson: I would also add that we know kids will park their car across the street from the school and have drugs in them and they know that is not OK because they have

been told that. In larger communities they take drug dogs along the streets where those cars are to make sure there are keeping the drugs away from the schools.

Senator Armstrong: Real property comprising a child care facility and the reason was we did not want it in because it is not advertised. That part in the bill about a private child care facility; we would have no idea we were 300' of it?

Senator Larson: Also a private daycare; the person responsible for the supervision and the childcare should be much more attentive. We felt the supervision would be there for them.

Senator Armstrong: Look at the bottom of page 2, the real property comprising of child care facility or preschool. The real property comprising; cut out child care and say the real property comprising of preschool.

Representative Hanson: (mike not on)

Representative Paur: Should we hold off calling another meeting.

Senator Armstrong: I don't want an A misdemeanor turn into an B felony. Those are jumps we don't typically make. People who are selling hard drugs may have a weapon, which adds danger. There is a danger in the activity going on. Driving by is not so critical. How you view a drug deal going down. The difference between a child care and a preschool; you at least know you are selling drugs 100' from a preschool.

Recess.


2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1341
4/11/2017
30059

Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to enhanced penalties for manufacturing, delivering, or possessing controlled substances near schools; and to provide a penalty.

Minutes:

1

Representative Paur: Opened the conference committee on HB 1341.

Attendance: Rep. Paur; Rep. Blum; Rep. Hanson; Senator Armstrong; Senator D. Larson; Senator C. Nelson.

Motion Made to move the Senate recede from Senate amendments and amend further with .03003 by Senator Armstrong; Seconded by Senator Nelson

Discussion:

Senator Armstrong: Section 3 is exactly as we left it in the Senate with the exception of striking childcare; which I think everyone was OK with. (#1) Went over the proposed amendment .03003. Section 2 is the possession section. We moved possession to on campus instead of having the difference. The language on the bottom is just putting in. that will be the same language that appears in 1041 as it moves through. It doesn't really matter for this section. The enhancement; if you get caught with possession is still going to be the B felony. We did not change any of that language. The marijuana language comes out; and the change is for possession, not dealing. It has to be on campus; there is no buffer of 300' and nexus between school. I think it is a pretty good compromise between the House and Senate version of the bill. I talked to DOCR and AG and there are no minimum mandatories for possession.

Roll Call Vote: 6 Yes 0 No 0 Absent

Carriers: Representative Paur: Senate Carrier: Senate Armstrong

Closed.

9/11/17 DJ

17.0169.03004
Title.05000

Adopted by the Conference Committee

April 11, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1341

That the Senate recede from its amendments as printed on pages 1223 and 1224 of the House Journal and pages 964 and 965 of the Senate Journal and that Engrossed House Bill No. 1341 be amended as follows:

Page 1, line 4, after "schools" insert "; and to provide a penalty"

Page 1, line 23, overstrike "eight" and insert immediately thereafter "four"

Page 2, line 13, after "a" insert "class A misdemeanor for a first offense under this subsection and a"

Page 2, line 13, after "felony" insert "for a second or subsequent offense of this subsection"

Page 2, line 16, remove the overstrike over "~~or a public-career and technical education school~~"

Page 2, line 24, after "offense" insert "was committed during a school-sponsored activity or was committed during the hours of six a.m. to ten p.m. if school is in session, the offense"

Page 2, line 25, overstrike the second "or" and immediately thereafter insert an underscored comma

Page 2, line 25, remove the overstrike over "~~, or within~~"

Page 2, line 26, after the overstruck closing bracket insert "three hundred feet [91.4 meters]"

Page 2, line 26, remove the overstrike over "of"

Page 2, line 26, overstrike "child care or"

Page 2, line 27, after the first comma insert "a"

Page 2, line 27, after the second comma insert "or a"

Page 2, line 27, remove the overstrike over "~~public-career and~~"

Page 2, line 28, remove the overstrike over "~~technical education school,~~"

Renumber accordingly

**2017 HOUSE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL HB 1341 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: Senator Armstrong Seconded by: Senator Nelson

Representatives	4/10	4/11		Yes	No	Senators	4/10	4/11		Yes	No
Rep. Paur	X	X		X		Senator Armstrong	X	X		X	
Rep. Blum	X	X		X		Senator D. Larson	X	X		X	
Rep. Hanson	X	X		X		Senator C. Nelson	X	X		X	
Total Rep. Vote				3		Total Senate Vote				3	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Rep. Paur Senate Carrier Senator Armstrong

LC Number 17.0169 . 03004 of amendment

LC Number 17.0169 . 05000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment: Added 17.0169.03003 with the additional changes on Page 2: Line 13 remove C felony and insert "A misdemeanor for a first violation of this subsection and a Class C felony for a second or subsequent violation of this subsection."

Insert LC: 17.0169.03004
House Carrier: Paur
Senate Carrier: Armstrong

REPORT OF CONFERENCE COMMITTEE

HB 1341, as engrossed: Your conference committee (Sens. Armstrong, D. Larson, Nelson and Reps. Paur, Blum, Hanson) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1223-1224, adopt amendments as follows, and place HB 1341 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1223 and 1224 of the House Journal and pages 964 and 965 of the Senate Journal and that Engrossed House Bill No. 1341 be amended as follows:

Page 1, line 4, after "schools" insert "; and to provide a penalty"

Page 1, line 23, overstrike "eight" and insert immediately thereafter "four"

Page 2, line 13, after "a" insert "class A misdemeanor for a first offense under this subsection and a"

Page 2, line 13, after "felony" insert "for a second or subsequent offense of this subsection"

Page 2, line 16, remove the overstrike over "~~or a public career and technical education school~~"

Page 2, line 24, after "offense" insert "was committed during a school-sponsored activity or was committed during the hours of six a.m. to ten p.m. if school is in session, the offense"

Page 2, line 25, overstrike the second "or" and immediately thereafter insert an underscored comma

Page 2, line 25, remove the overstrike over "~~, or within~~"

Page 2, line 26, after the overstruck closing bracket insert "three hundred feet [91.4 meters]"

Page 2, line 26, remove the overstrike over "of"

Page 2, line 26, overstrike "child care or"

Page 2, line 27, after the first comma insert "a"

Page 2, line 27, after the second comma insert "or a"

Page 2, line 27, remove the overstrike over "~~public career and~~"

Page 2, line 28, remove the overstrike over "~~technical education school,~~"

Re-number accordingly

Engrossed HB 1341 was placed on the Seventh order of business on the calendar.

2017 TESTIMONY

HB 1341

HB1341 to revise specific aggravating factors for certain drug offenses
-Rick Becker

#1
1341
1-25-17
Rick
Becker

Why this bill?

One of 3 concerns identified with Andrew Sadek case.

- 1) Confidential Informant. 2) Criminal penalties for marijuana
- And 3) this bill to consider aggravating factors to increase penalties

Section 1

Current law: a. for repeat offenders (except marijuana) the following added penalties:

- b. Delivery/distribute within 1000 ft of school; get an added min 8 years.
- c. If 21 yo delivers to less than 18; get an additional min of 8 yrs

In this bill: a. If 21 yo delivers to less than 18; get additional min of 8 years...

- b. But not for marijuana

Section 2

Current law: Possession within 1000 ft of elementary, secondary, or career or technical school, guilty of class B felony, unless marijuana- class B misdemeanor

In this bill: Schools removed

Section 3

Current law: delivery distribute within 1000 ft of childcare, preschool, elementary, secondary, career and technical schools, or college or university, it's considered aggravating factor (ups the crime 1 notch: i.e Class B felony instead of Class C, or Class C felony instead of class A misdemeanor.)

If 16 yo or older and delivers to minor, also an aggravating factor.

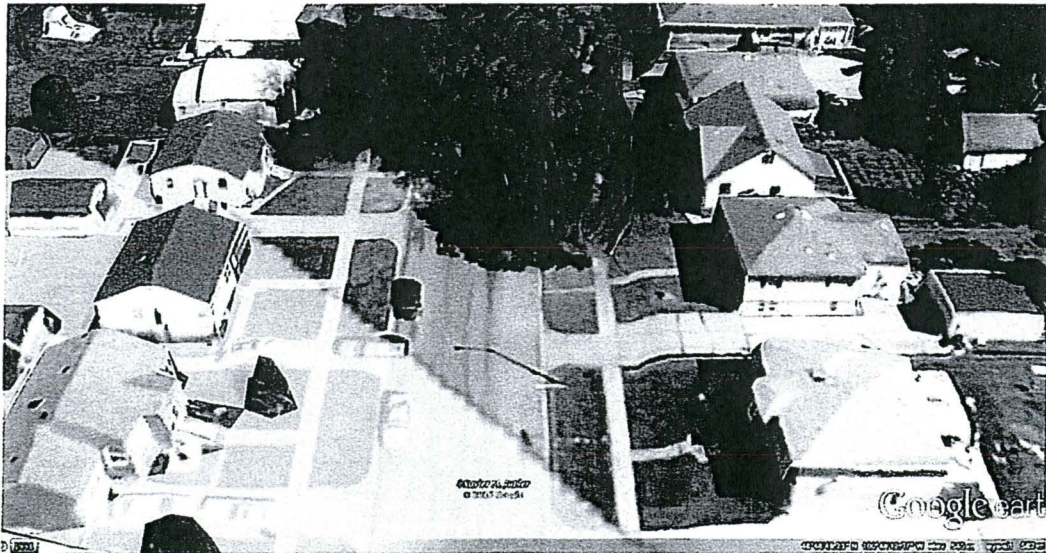
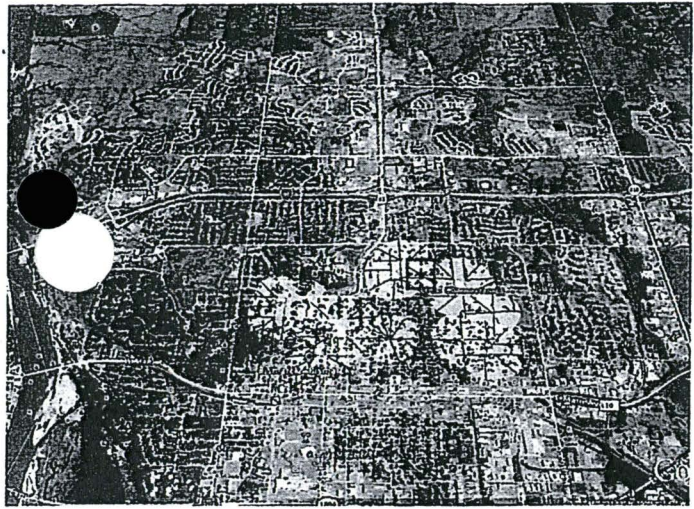
In this bill: Schools removed, and changes 16yo to 21yo.

Why pass this bill: the 1000 ft is very large, arbitrary, and is used to leverage criminals to plead, etc. A better option is to simply make the penalty fit the crime.

Selling to a minor is already an aggravating factor, which was the intent of the school zone.

Please see diagram of perimeters for the severe arbitrary aspect or penalties for the same crime

Option: Amendment to the bill which eliminates the 1000 ft perimeter, but leaves daycare, elementary and high school as aggravating if **on** premises.



Penalties by Classification of Offense

12.1-32-01. Classification of offenses - Penalties. Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

1. **Class AA felony** - maximum - life imprisonment without parole
The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole.
2. **Class A felony** – maximum - 20 years, a fine of \$20,000, or both
3. **Class B felony** – maximum - 10 years, a fine of \$20,000, or both
4. **Class C felony** – maximum - 5 years, a fine of \$10,000, or both
5. **Class A misdemeanor** – maximum – 1 year, a fine of \$3,000, or both
6. **Class B misdemeanor** - maximum - 30 days, a fine of \$1,500 or both
7. **Infraction** - \$1,000 fine

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1341

- Page 2, line 12, remove the overstrike over "~~Except as otherwise provided~~"
- Page 2, line 13, remove the overstrike over "~~in this subsection, any~~"
- Page 2, line 13, remove "Any"
- Page 2, line 14, remove the overstrike over "~~If, at the time of the offense, the person is in or on~~"
- Page 2, line 15, remove the overstrike over "~~the real property comprising a public or private elementary or~~"
- Page 2, line 16, remove the overstrike over "~~secondary school~~"
- Page 2, line 16, remove the overstrike over "~~, the person is~~"
- Page 2, line 17, remove the overstrike over "~~guilty of a class B felony, unless the offense involves~~"
- Page 2, line 18, remove the overstrike over "~~marijuana. Any person who violates this subsection regarding possession~~"
- Page 2, line 19, remove the overstrike over "~~of marijuana is guilty of a class B misdemeanor.~~"
- Page 2, line 24, remove the overstrike over "~~The offense involved the manufacture, delivery, or possession, with intent to~~"
- Page 2, line 25, remove the overstrike over "~~manufacture or deliver a controlled substance in or on~~"
- Page 2, line 26, remove the overstrike over "~~the real property comprising a child care or preschool~~"
- Page 2, line 27, remove the overstrike over "~~facility, public or private elementary or secondary school,~~"
- Page 2, line 29, overstrike "The" and insert immediately thereafter "the"
- Page 2, line 30, after the first "offense" insert an underscored comma
- Re-number accordingly

Introduced by

Representative Rick C. Becker

1 A BILL for an Act to amend and reenact subsections 3 and 7 of section 19-03.1-23 and
2 subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code, relating to the
3 elimination of enhanced penalties for manufacturing, delivering, or possessing controlled
4 substances near schools.

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

6 **SECTION 1. AMENDMENT.** Subsection 3 of section 19-03.1-23 of the North Dakota
7 Century Code is amended and reenacted as follows:

- 8 3. a. For second or subsequent ~~offenders~~offenses, in addition to any other penalty
9 imposed under this section, ~~if the~~ person who violates this chapter, ~~except a~~
10 ~~person who manufactures, delivers, or possesses with the intent to manufacture~~
11 ~~or deliver marijuana, was at least twenty-one years of age at the time of the~~
12 ~~offense, and delivered a controlled substance to a person under the age of~~
13 ~~eighteen, the person~~ is subject to, and the court shall impose, ~~the following~~
14 ~~penalties to run consecutively to any other sentence imposed:~~
- 15 a. Any person, ~~eighteen years of age or older, who violates this section by willfully~~
16 ~~manufacturing, delivering, or possessing with intent to manufacture or deliver a~~
17 ~~controlled substance in or on, or within one thousand feet [300.48 meters] of the~~
18 ~~real property comprising a public or private elementary or secondary school or a~~
19 ~~public career and technical education school is subject to an eight-year term of~~
20 ~~imprisonment.~~
- 21 b. ~~If the defendant was at least twenty-one years of age at the time of the offense,~~
22 ~~and delivered a controlled substance to a person under the age of eighteen, the~~
23 ~~defendant must be sentenced to a term of imprisonment for of~~ at least eight years
24 which is to run consecutively to any other sentence imposed.

- 1 eb. The offense involved:
- 2 (1) Fifty grams or more of a mixture or substance containing a detectable
- 3 amount of heroin;
- 4 (2) Fifty grams or more of a mixture or substance containing a detectable
- 5 amount of:
- 6 (a) Coca leaves, except coca leaves and extracts of coca leaves from
- 7 which cocaine, ecgonine, and derivatives of ecgonine or their salts
- 8 have been removed;
- 9 (b) Cocaine, its salts, optical and geometric isomers, and salts of
- 10 isomers;
- 11 (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
- 12 (d) Any compound, mixture, or preparation that contains any quantity of
- 13 any of the substance referred to in subparagraphs a through c;
- 14 (3) Five grams or more of a mixture or substance described in paragraph 2
- 15 which contains cocaine base;
- 16 (4) Ten grams or more of phencyclidine or one hundred grams or more of a
- 17 mixture or substance containing a detectable amount of phencyclidine;
- 18 (5) One gram, one hundred dosage units, or one-half liquid ounce or more of a
- 19 mixture or substance containing a detectable amount of lysergic acid
- 20 diethylamide;
- 21 (6) Forty grams or more of a mixture or substance containing a detectable
- 22 amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or ten
- 23 grams or more of a mixture or substance containing a detectable amount of
- 24 any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;
- 25 (7) Fifty grams or more of a mixture or substance containing a detectable
- 26 amount of methamphetamine;
- 27 (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a
- 28 mixture or substance containing a detectable amount of
- 29 3,4-methylenedioxy-N-methylamphetamine, C₁₁H₁₅NO₂;
- 30 (9) One hundred dosage units or one-half liquid ounce of a mixture or
- 31 substance containing a detectable amount of gamma-hydroxybutyrate or

Sixty-fifth
Legislative Assembly

- 1 gamma-butyrolactone or 1,4 butanediol or any substance that is an analog
2 of gamma-hydroxybutyrate;
3 (10) One hundred dosage units or one-half liquid ounce of a mixture or
4 substance containing a detectable amount of flunitrazepam; or
5 (11) Five hundred grams or more of marijuana; or
6 et c. The defendant had a firearm in the defendant's actual possession at the time of
7 the offense.

3/15/17

①

HB 1341

HB1341 to revise specific aggravating factors for certain drug offenses

-Rick Becker

Why this bill?

One of 3 concerns identified with Andrew Sadek case.

- 1) Confidential Informant. 2) Criminal penalties for marijuana
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Current law: Possession within 1000 ft of elementary, secondary, or career or technical school, guilty of class B felony, unless marijuana- class B misdemeanor

In this bill: limited to ON school premises, and post-secondary schools removed

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Current law: delivery distribute within 1000 ft of childcare, preschool, elementary, secondary, career and technical schools, or college or university, it's considered aggravating factor (ups the crime 1 notch: i.e Class B felony instead of Class C, or Class C felony instead of class A misdemeanor.)

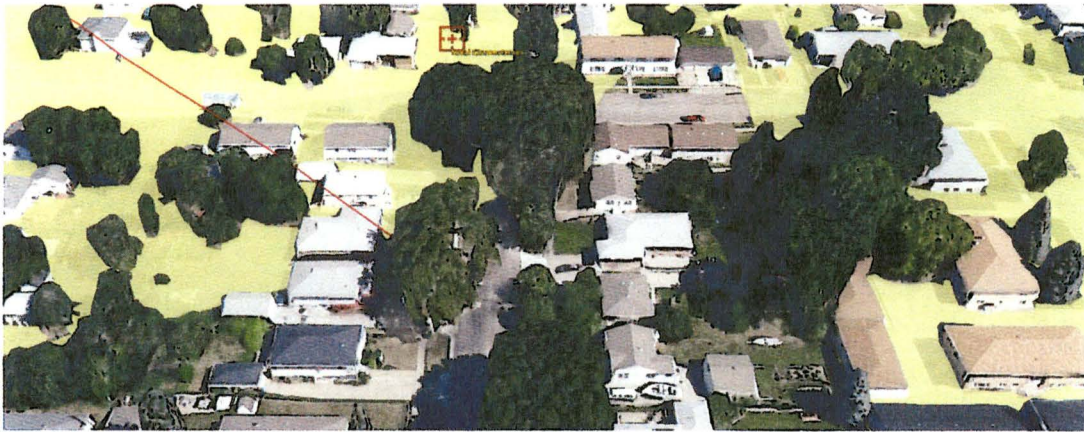
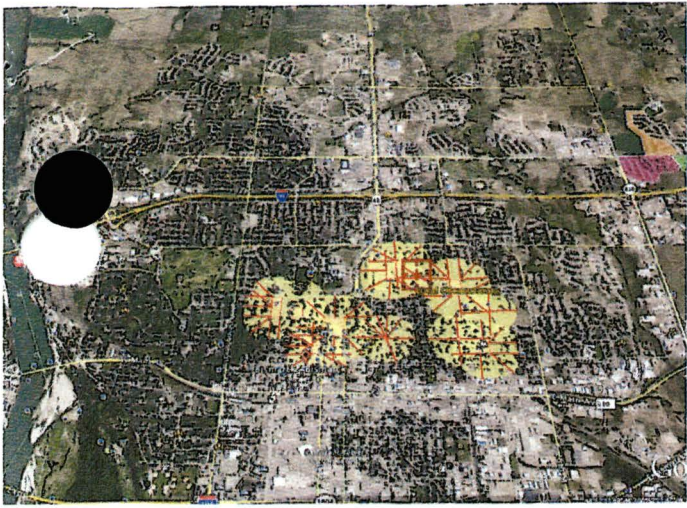
If 16 yo or older and delivers to minor, also an aggravating factor.

In this bill: limited to ON daycare and school premises and post-secondary schools removed, and changes 16yo to 21yo.

Why pass this bill: the 1000 ft is very large, arbitrary, and is used to leverage criminals to plead, etc. A better option is to simply make the penalty fit the crime.

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7. **Infraction** - \$1,000 fine

3/27/17

①

HB 1341

17.0169.03001

Sixty-fifth
Legislative Assembly
of North Dakota

INTERN DRAFT AMENDMENT FOR EHB 1341
TO SUPPLEMENT LC AM. 17.0169.03001

***vote on the LC amendment and make revisions**

Page 1, line 3, remove "elimination of"

Page 2, line 14, overstrike ",at the time of"

Page 2, line 14, after "offense" insert "was committed during the hours of six a.m. to ten p.m. when school is in session or during a regularly school-sponsored activity"

Page 2, line 14, remove the overstrike over "~~or within~~"

Page 2, line 15, after the overstruck closing bracket insert "three hundred feet [91.4 meters]"

Page 2, line 15, remove the overstrike over "~~of~~"

Page 2, line 16, remove the overstrike over "~~or a public career and technical education school~~"

Page 2, line 24, after "offense" insert "was committed during the hours of six a.m. to ten p.m. when school is in session or during a regularly school-sponsored activity"

Page 2, line 25, remove the overstrike over "~~of~~"

Page 2, line 26, after the overstruck closing bracket insert "three hundred feet [91.4 meters]"

Page 2 line 26, remove the overstrike over "~~of~~"

Page 2, line 27, remove the overstrike over "~~public career and~~"

Page 2m remove the overstrike over line 28

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1341

That the House recede from its amendments as printed on pages 1223 and 1224 of the Senate Journal and pages 964 and 965 of the House Journal and that Engrossed House Bill No. 1341 be amended as follows:

Page 1, line 23, overstrike "eight" and insert immediately thereafter "four"

Page 2, line 16, remove the overstrike over "~~or a public career and technical education school~~"

Page 2, line 24, after "offense" insert "was committed during the hours of six a.m. to ten p.m. when school is in session or during a regularly school-sponsored activity, and"

Page 2, line 25, remove the overstrike over "~~, or within~~"

Page 2, line 26, after the overstruck closing bracket insert "three hundred feet [91.4 meters]"

Page 2, line 26, remove the overstrike over "of,"

Page 2, line 26, overstrike "child care or"

Page 2, line 27, after the first comma insert "a"

Page 2, line 27, after the second comma insert "or a"

Page 2, line 27, remove the overstrike over "~~public career and~~"

Page 2, line 28, remove the overstrike over "~~technical education school,~~"

Renumber accordingly

Page 2
Line 13 REMOVE c Felony and insert
" A misdemeanor for a first violation of this
subsection and a Class C Felony for a
second or subsequent violation
of this subsection."

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1341

Introduced by

Representative Rick C. Becker

1 A BILL for an Act to amend and reenact subsections 3 and 7 of section 19-03.1-23 and
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8 3. a. For second or subsequent ~~offenders~~offenses, in addition to any other penalty
9 imposed under this section, ~~aif the person who violates this chapter, except a~~
10 ~~person who manufactures, delivers, or possesses with the intent to manufacture~~
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21 b. ~~If the defendant was at least twenty-one years of age at the time of the offense,~~
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23 ~~defendant must be sentenced to a term of imprisonment for of at least eight~~four
24 years which is to run consecutively to any other sentence imposed.

- 1 ~~b.~~ The defendant was at least ~~sixteen~~twenty-one years of age at the time of the
- 2 offense, and the offense involved the delivery of a controlled substance to a
- 3 minor;
- 4 eb. The offense involved:
- 5 (1) Fifty grams or more of a mixture or substance containing a detectable
- 6 amount of heroin;
- 7 (2) Fifty grams or more of a mixture or substance containing a detectable
- 8 amount of:
- 9 (a) Coca leaves, except coca leaves and extracts of coca leaves from
- 10 which cocaine, ecgonine, and derivatives of ecgonine or their salts
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- 12 (b) Cocaine, its salts, optical and geometric isomers, and salts of
- 13 isomers;
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- 27 any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] propanamide;
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- 29 amount of methamphetamine;

- 1 (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a
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3 3,4-methylenedioxy-N-methylamphetamine, C₁₁H₁₅NO₂;
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9 substance containing a detectable amount of flunitrazepam; or
10 (11) Five hundred grams or more of marijuana; or
11 etc. The defendant had a firearm in the defendant's actual possession at the time of
12 the offense.