

2021 HOUSE JUDICIARY

HB 1201

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary
Room JW327B, State Capitol

HB 1201
2/16/2021

Relating to marijuana.

Chairman Klemin called the hearing to order at 10:09 AM.

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

Rep. Roers Jones: Introduced the bill.

Discussion Topics:

- Criminal records quantity
- Legalization measure
- Legal quantity amounts

Closed 10:19 Reopened the hearing 10:47

Rep. Vetter: Do pass motion. Rep. Becker: Seconded

Roll Call Vote:

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

Motion carried. 8-4-2

Rep. Vetter: Carrier

Additional Testimony: # 6661

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Chairman Klemin: Stopped 10:55

DeLores D. Shimek
Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1201: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO PASS** (8 YEAS, 4 NAYS, 2 ABSENT AND NOT VOTING). HB 1201 was placed on the Eleventh order on the calendar.



Working to Reform Marijuana Laws

My name is Carly Wolf, State Policies Coordinator for The National Organization for the Reform of Marijuana Laws (NORML). I wish to thank the Chair and members of the Committee for considering House Bill 1201. NORML is supportive of legislative efforts to remove criminal penalties for the possession of personal use quantities of cannabis by adults.

House Bill 1201 amends state law so that the possession of up to one ounce of marijuana is classified as a civil rather than as a criminal offense -- punishable by a ticket of up to \$50.

Legislation enacted in 2019 reclassified the possession of up to one-half ounce of cannabis and/or the personal possession of marijuana-related paraphernalia for a first-time offender from a criminal misdemeanor, punishable by up to 30 days in jail, to a criminal infraction – punishable by a fine but no possibility of jail time.

Nonetheless, under the law, offenders are still saddled with the stigma and lost opportunities associated with a lifelong criminal record -- despite lacking the possibility of jail time. By contrast, the enactment of HB 1201 would continue to discourage marijuana abuse while halting the practice of permanently criminalizing thousands of otherwise law-abiding citizens of North Dakota.

Decriminalizing low-level marijuana offenses will ensure that minor marijuana possession offenders, many of them young people, are not saddled with a criminal record and the lifelong penalties and stigma associated with it.

The American Civil Liberties Union research report, *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform* (2020) concluded: "On average, a Black person is 3.64 times more likely to be arrested for marijuana possession than a white person, even though Black and white people use marijuana at similar rates. Just as before, such racial disparities in marijuana possession arrests exist across the country, in every state, in counties large and small, urban and rural, wealthy and poor, and with large and small Black populations."¹

Findings in this same report show that in North Dakota in 2018, almost 2,700 individuals were arrested for marijuana law violations. Of those arrested, 94 percent of defendants were charged with possession only. Arrests for the possession of marijuana in the state made up almost half of all drug arrests in 2018.

Black people in North Dakota are more than five times as likely to be arrested for marijuana-related violations as are white people. In places like Morton, Blacks are almost ten

¹ <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>





Working to Reform Marijuana Laws

times as likely to be arrested for marijuana possession than whites. North Dakota ranks 7th in the nation for largest racial disparities in marijuana arrests.

If lawmakers truly wish to reap the societal and fiscal benefits of decriminalization, and truly wish to significantly reduce the number of North Dakota adults adversely impacted by a criminal record, then we suggest supporting the passage of HB 1201, to fully decriminalize the possession of up to one ounce of cannabis by adults.



2021 SENATE JUDICIARY

HB 1201

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1201, AM
3/10/2021

Relating to Marijuana

Hearing called to order, all senators are present: **Myrdal, Luick, Dwyer, Bakke, Heitkamp, Fors, and Larson.**

Discussion Topics:

- Decriminalize use of marijuana and THC
- Definition of controlled substances & marijuana

Representative Roers Jones, [9:00] introduced HB 1201 #8534

Tara Bradner, [9:08] Assistant Attorney General, provided neutral testimony

Charlene Rittenbach, [9:19] provided neutral testimony & explanations

Additional written testimony:

Mitchell S Sanderson, Bismarck, ND, in favor of, #8076

Carly Wolf, State Policies Manager, in favor, #8416

Chair Larson closed the Hearing [9:47]

Jamal Omar, Committee Clerk

21.0542.01001

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1201

Introduced by

Representatives Roers Jones, Becker, Boschee, Dockter, Mock, M. Ruby

Senators Meyer, K. Roers

1 A BILL for an Act to amend and reenact section 19-03.1-01, subdivision n of subsection 5 of
 2 section 19-03.1-05, subsection 1 of section 19-03.1-22.2, section 19-03.1-22.3, subdivision d of
 3 subsection 7 of section 19-03.1-23 ~~and section~~, subsection 9 of section 19-03.1-23,
 4 subsection 1 of section 19-03.1-23.1, subsection 12 of section 19-03.4-01, and sections
 5 19-03.4-03 and 19-03.4-04 of the North Dakota Century Code, relating to marijuana; and to
 6 provide a penalty.

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

8 **SECTION 1. AMENDMENT.** Section 19-03.1-01 of the North Dakota Century Code is
 9 amended and reenacted as follows:

10 **19-03.1-01. Definitions.**

11 As used in this chapter and in chapters 19-03.2 and 19-03.4, unless the context otherwise
 12 requires:

- 13 1. "Administer" means to apply a controlled substance, whether by injection, inhalation,
 14 ingestion, or any other means, directly to the body of a patient or research subject by:
 - 15 a. A practitioner or, in the practitioner's presence, by the practitioner's authorized
 16 agent; or
 - 17 b. The patient or research subject at the direction and in the presence of the
 18 practitioner.
- 19 2. "Agent" means an authorized person who acts on behalf of or at the direction of a
 20 manufacturer, distributor, or dispenser. It does not include a common or contract
 21 carrier, public warehouseman, or employee of the carrier or warehouseman.
- 22 3. "Anabolic steroids" means any drug or hormonal substance, chemically and
 23 pharmacologically related to testosterone, other than estrogens, progestins, and
 24 corticosteroids.

- 1 4. "Board" means the state board of pharmacy.
- 2 5. "Bureau" means the drug enforcement administration in the United States department
3 of justice or its successor agency.
- 4 6. "Controlled substance" means a drug, substance, or immediate precursor in schedules
5 I through V as set out in this chapter.
- 6 7. "Controlled substance analog":
 - 7 a. Means a substance the chemical structure of which is substantially similar to the
8 chemical structure of a controlled substance in a schedule I or II and:
 - 9 (1) Which has a stimulant, depressant, or hallucinogenic effect on the central
10 nervous system which is substantially similar to or greater than the
11 stimulant, depressant, or hallucinogenic effect on the central nervous
12 system of a controlled substance in schedule I or II; or
 - 13 (2) With respect to a particular individual, which the individual represents or
14 intends to have a stimulant, depressant, or hallucinogenic effect on the
15 central nervous system substantially similar to or greater than the stimulant,
16 depressant, or hallucinogenic effect on the central nervous system of a
17 controlled substance in schedule I or II.
 - 18 b. Does not include:
 - 19 (1) A controlled substance;
 - 20 (2) Any substance for which there is an approved new drug application; or
 - 21 (3) With respect to a particular individual, any substance, if an exemption is in
22 effect for investigational use, for that individual, under section 505 of the
23 Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355] to the extent conduct
24 with respect to the substance is pursuant to the exemption.
- 25 8. "Counterfeit substance" means a controlled substance which, or the container or
26 labeling of which, without authorization, bears the trademark, trade name, or other
27 identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer,
28 distributor, or dispenser other than the person who in fact manufactured, distributed, or
29 dispensed the substance.

- 1 9. "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one
2 person to another of a controlled substance whether or not there is an agency
3 relationship.
- 4 10. "Dispense" means to deliver a controlled substance to an ultimate user or research
5 subject by or pursuant to the lawful order of a practitioner, including the prescribing,
6 administering, packaging, labeling, or compounding necessary to prepare the
7 substance for that delivery.
- 8 11. "Dispenser" means a practitioner who dispenses.
- 9 12. "Distribute" means to deliver other than by administering or dispensing a controlled
10 substance.
- 11 13. "Distributor" means a person who distributes.
- 12 14. "Drug" means:
- 13 a. Substances recognized as drugs in the official United States pharmacopeia
14 national formulary, or the official homeopathic pharmacopeia of the United States,
15 or any supplement to any of them;
- 16 b. Substances intended for use in the diagnosis, cure, mitigation, treatment, or
17 prevention of disease in individuals or animals;
- 18 c. Substances, other than food, intended to affect the structure or any function of
19 the body of individuals or animals; and
- 20 d. Substances intended for use as a component of any article specified in
21 subdivision a, b, or c. The term does not include devices or their components,
22 parts, or accessories.
- 23 15. ~~"Hashish" means the resin extracted from any part of the plant cannabis with or~~
24 ~~without its adhering plant parts, whether growing or not, and every compound,~~
25 ~~manufacture, salt, derivative, mixture, or preparation of the resin.~~
- 26 ~~16.~~ "Immediate precursor" means a substance:
- 27 a. That the board has found to be and by rule designates as being the principal
28 compound commonly used or produced primarily for use in the manufacture of a
29 controlled substance;
- 30 b. That is an immediate chemical intermediary used or likely to be used in the
31 manufacture of the controlled substance; and

1 c. The control of which is necessary to prevent, curtail, or limit the manufacture of
2 the controlled substance.

3 ~~17.16.~~ "Manufacture" means the production, preparation, propagation, compounding,
4 conversion, or processing of a controlled substance, either directly or indirectly by
5 extraction from substances of natural origin, or independently by means of chemical
6 synthesis, or by a combination of extraction and chemical synthesis and includes any
7 packaging or repackaging of the substance or labeling or relabeling of its container.
8 The term does not include the preparation or compounding of a controlled substance
9 by an individual for the individual's own use or the preparation, compounding,
10 packaging, or labeling of a controlled substance:

- 11 a. By a practitioner as an incident to the practitioner's administering or dispensing of
12 a controlled substance in the course of the practitioner's professional practice; or
13 b. By a practitioner, or by the practitioner's authorized agent under the practitioner's
14 supervision, for the purpose of, or as an incident to, research, teaching, or
15 chemical analysis and not for sale.

16 ~~18.17.~~ "Marijuana" means all parts of the plant *cannabis sativa* L., whether growing or not;
17 the seeds thereof; the resin extracted from any part of the plant; and every compound,
18 manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.

19 The term does not include ~~the~~:

20 a. The mature stalks of the plant, fiber produced from the stalks, oil or cake made
21 from the seeds of the plant, any other compound, manufacture, salt, derivative,
22 mixture, or preparation of mature stalks, except the resin extracted therefrom,
23 fiber, oil, or cake, or the sterilized seed of the plant which is incapable of
24 germination. ~~The term marijuana does not include hemp as defined in title 4.1~~

25 b. Hemp as defined in chapter 4.1-18.1; or

26 c. A prescription drug approved by the United States food and drug administration
27 under section 5050 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355].

28 ~~19.18.~~ "Narcotic drug" means any of the following, whether produced directly or indirectly by
29 extraction from substances of vegetable origin, or independently by means of chemical
30 synthesis, or by a combination of extraction and chemical synthesis:

- 1 a. Opium and opiate and any salt, compound, derivative, or preparation of opium or
2 opiate.
- 3 b. Any salt, compound, isomer, derivative, or preparation thereof which is
4 chemically equivalent or identical with any of the substances referred to in
5 subdivision a, but not including the isoquinoline alkaloids of opium.
- 6 c. Opium poppy and poppy straw.
- 7 d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves,
8 any salt, compound, isomer, derivative, or preparation thereof which is chemically
9 equivalent or identical with any of these substances, but not including
10 decocainized coca leaves or extractions of coca leaves which do not contain
11 cocaine or ecgonine.
- 12 ~~20.19.~~ "Opiate" means any substance having an addiction-forming or addiction-sustaining
13 liability similar to morphine or being capable of conversion into a drug having
14 addiction-forming or addiction-sustaining liability. The term does not include, unless
15 specifically designated as controlled under section 19-03.1-02, the dextrorotatory
16 isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term
17 includes its racemic and levorotatory forms.
- 18 ~~21.20.~~ "Opium poppy" means the plant of the species *papaver somniferum* L., except its
19 seeds.
- 20 ~~22.21.~~ "Over-the-counter sale" means a retail sale of a drug or product other than a
21 controlled, or imitation controlled, substance.
- 22 ~~23.22.~~ "Person" means individual, corporation, limited liability company, government or
23 governmental subdivision or agency, business trust, estate, trust, partnership or
24 association, or any other legal entity.
- 25 ~~24.23.~~ "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
- 26 ~~25.24.~~ "Practitioner" means:
- 27 a. A physician, dentist, veterinarian, pharmacist, scientific investigator, or other
28 person licensed, registered, or otherwise permitted by the jurisdiction in which the
29 individual is practicing to distribute, dispense, conduct research with respect to,
30 or to administer a controlled substance in the course of professional practice or
31 research.

1 b. A pharmacy, hospital, or other institution licensed, registered, or otherwise
2 permitted to distribute, dispense, conduct research with respect to, or to
3 administer a controlled substance in the course of professional practice or
4 research in this state.

5 ~~26-25.~~ "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of
6 a controlled substance.

7 ~~27-26.~~ "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction
8 made by a person, whether as principal, proprietor, agent, servant, or employee.

9 ~~28-27.~~ "Scheduled listed chemical product" means a product that contains ephedrine,
10 pseudoephedrin, or phenylpropanolamine, or each of the salts, optical isomers, and
11 salts of optical isomers of each chemical, and that may be marketed or distributed in
12 the United States under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301
13 et seq.] as a nonprescription drug unless prescribed by a licensed physician.

14 ~~29-28.~~ "State" when applied to a part of the United States includes any state, district,
15 commonwealth, territory, insular possession thereof, and any area subject to the legal
16 authority of the United States.

17 ~~30-29.~~ "Ultimate user" means an individual who lawfully possesses a controlled substance for
18 the individual's own use or for the use of a member of the individual's household or for
19 administering to an animal owned by the individual or by a member of the individual's
20 household.

21 **SECTION 2. AMENDMENT.** Subdivision n of subsection 5 of section 19-03.1-05 of the
22 North Dakota Century Code is amended and reenacted as follows:

23 n. (1) Tetrahydrocannabinols, meaning tetrahydrocannabinols naturally contained
24 in a plant of the genus Cannabis (cannabis plant), as well as synthetic
25 equivalents of the substances contained in the cannabis plant, or in the
26 resinous extractives of such plant, including synthetic substances,
27 derivatives, and their isomers with similar chemical structure and
28 pharmacological activity to those substances contained in the plant;
29 ~~excluding tetrahydrocannabinols found in hemp as defined in title 4.1;~~ such
30 as the following:

1 ~~(1)~~(a) Delta-1 cis or trans tetrahydrocannabinol, and their optical isomers.
2 Other names: Delta-9-tetrahydrocannabinol.

3 ~~(2)~~(b) Delta-6 cis or trans tetrahydrocannabinol, and their optical isomers.

4 ~~(3)~~(c) Delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers.
5 (Since nomenclature of these substances is not internationally standardized,
6 compounds of these structures, regardless of numerical designation of atomic
7 positions covered.)

8 (2) Tetrahydrocannabinols does not include tetrahydrocannabinols found in
9 hemp as defined in chapter 4.1-18.1.

10 **SECTION 3. AMENDMENT.** Subsection 1 of section 19-03.1-22.2 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 1. For purposes of this section:

13 a. "Chemical substance" means a substance intended to be used as a precursor in
14 the manufacture of a controlled substance or any other chemical intended to be
15 used in the manufacture of a controlled substance. Intent under this subsection
16 may be demonstrated by the substance's use, quantity, manner of storage, or
17 proximity to other precursors or to manufacturing equipment.

18 b. "Child" means an individual who is under the age of eighteen years.

19 c. "Controlled substance" means the same as that term is defined in section
20 19-03.1-01, except the term does not include less than ~~one-half~~one ounce
21 [28.350 grams] of marijuana, less than five grams of tetrahydrocannabinol in
22 concentrate form, or less than eight ounces [226.8 grams] of
23 tetrahydrocannabinol in infused product form.

24 d. "Drug paraphernalia" means the same as that term is defined in section
25 19-03.4-01.

26 e. "Prescription" means the same as that term is described in section 19-03.1-22.

27 f. "Vulnerable adult" means a vulnerable adult as the term is defined in section
28 50-25.2-01.

29 **SECTION 4. AMENDMENT.** Section 19-03.1-22.3 of the North Dakota Century Code is
30 amended and reenacted as follows:

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

1. Except as provided in subsection 2, 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 A misdemeanor. This subsection does not apply to ingesting, inhaling, injecting, or otherwise taking into the body marijuana or tetrahydrocannabinol.
2. A person who is under twenty-one years of age and intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance that is marijuana, unless the substance was medical marijuana obtained in accordance with chapter 19-24.1, is guilty of a ~~class B misdemeanor~~ noncriminal offense punishable by a fee of up to fifty dollars.
3. 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 5. AMENDMENT. Subdivision d of subsection 7 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

d. A person who violates this subsection by possessing:

(1) Marijuana ~~in~~

(a) In an amount of less than ~~one-half~~ one ounce [44.17528.350 grams] is guilty of ~~an infraction~~ a noncriminal offense punishable by a fee of up to fifty dollars.

~~(2)~~ (b) At least ~~one-half~~ one ounce [44.17528.350 grams] but not more than ~~500~~ 250 grams of marijuana is guilty of ~~a class B misdemeanor~~ an infraction.

~~(3)~~ (c) More than 250 grams but not more than 500 grams of marijuana is guilty of a class B misdemeanor.

~~(4)~~ (d) More than 500 grams of marijuana is guilty of a class A misdemeanor.

(2) Tetrahydrocannabinol in concentrate form:

1 (a) In an amount less than five grams is guilty of a noncriminal offense
2 punishable by a fee of up to fifty dollars.

3 (b) At least five grams but not more than twelve and one-half grams is
4 guilty of a class A misdemeanor.

5 (c) More than twelve and one-half grams is guilty of a class C felony.

6 (3) Tetrahydrocannabinol in infused product form:

7 (a) In an amount less than eight ounces [226.8 grams] is guilty of a
8 noncriminal offense punishable by a fee of up to fifty dollars.

9 (b) At least eight ounces [226.8 grams] but not more than sixteen ounces
10 [253.6 grams] is guilty of a class A misdemeanor.

11 (c) More than sixteen ounces [453.6 grams] is guilty of a class C felony.

12 **SECTION 6. AMENDMENT.** Subsection 9 of section 19-03.1-23 of the North Dakota
13 Century Code is amended and reenacted as follows:

- 14 9. If a person pleads guilty or is found guilty of a first offense regarding possession of
15 less than one ounce [28.35 grams] ~~or less~~ of marijuana, less than five grams of
16 tetrahydrocannabinol in concentrate form, or less than eight ounces [226.8 grams] of
17 tetrahydrocannabinol in infused product form and a judgment of guilt is entered, a
18 court, upon motion, shall seal the court record of that conviction if the person is not
19 subsequently convicted within two years of a further violation of this chapter. Once
20 sealed, the court record may not be opened even by order of the court.

21 **SECTION 7. AMENDMENT.** Subsection 1 of section 19-03.1-23.1 of the North Dakota
22 Century Code is amended and reenacted as follows:

- 23 1. A person who violates section 19-03.1-23 is subject to the penalties provided in
24 subsection 2 if:
25 a. The offense was committed during a school sponsored activity or was committed
26 during the hours of six a.m. to ten p.m. if school is in session, the offense
27 involved the manufacture, delivery, or possession, with intent to manufacture or
28 deliver a controlled substance in, on, or within three hundred feet [91.4 meters] of
29 the real property comprising a preschool facility, a public or private elementary or
30 secondary school, or a public career and technical education school, the

1 defendant was at least twenty-one years of age at the time of the offense, and
2 the offense involved the delivery of a controlled substance to a minor;

3 b. The offense involved:

4 (1) Fifty grams or more of a mixture or substance containing a detectable
5 amount of heroin;

6 (2) Fifty grams or more of a mixture or substance containing a detectable
7 amount of:

8 (a) Coca leaves, except coca leaves and extracts of coca leaves from
9 which cocaine, ecgonine, and derivatives of ecgonine or their salts
10 have been removed;

11 (b) Cocaine, its salts, optical and geometric isomers, and salts of
12 isomers;

13 (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

14 (d) Any compound, mixture, or preparation that contains any quantity of
15 any of the substance referred to in subparagraphs a through c;

16 (3) Twenty-eight grams or more of a mixture or substance described in
17 paragraph 2 which contains cocaine base;

18 (4) Ten grams or more of phencyclidine or one hundred grams or more of a
19 mixture or substance containing a detectable amount of phencyclidine;

20 (5) One gram, one hundred dosage units, or one-half liquid ounce or more of a
21 mixture or substance containing a detectable amount of lysergic acid
22 diethylamide;

23 (6) Forty grams or more of a mixture or substance containing a detectable
24 amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or ten
25 grams or more of a mixture or substance containing a detectable amount of
26 any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

27 (7) Fifty grams or more of a mixture or substance containing a detectable
28 amount of methamphetamine;

29 (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a
30 mixture or substance containing a detectable amount of
31 3,4-methylenedioxy-N-methylamphetamine, C₁₁H₁₅NO₂;

1 (9) One hundred dosage units or one-half liquid ounce of a mixture or
2 substance containing a detectable amount of gamma-hydroxybutyrate or
3 gamma-butyrolactone or 1,4 butanediol or any substance that is an analog
4 of gamma-hydroxybutyrate; or

5 (10) One hundred dosage units or one-half liquid ounce of a mixture or
6 substance containing a detectable amount of flunitrazepam; or

7 ~~(11) Five hundred grams or more of marijuana; or~~

8 c. The defendant had a firearm in the defendant's actual possession at the time of
9 the offense.

10 **SECTION 8. AMENDMENT.** Subsection 12 of section 19-03.4-01 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 12. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise
13 introducing marijuana, or cocaine, ~~hashish, or hashish oil~~ into the human body,
14 including:

15 a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
16 screens, permanent screens, ~~hashish heads~~, or punctured metal bowls.

17 b. Water pipes.

18 c. Carburetion tubes and devices.

19 d. Smoking and carburetion masks.

20 e. Objects, sometimes commonly referred to as roach clips, used to hold burning
21 material, for example, a marijuana cigarette, that has become too small or too
22 short to be held in the hand.

23 f. Miniature cocaine spoons and cocaine vials.

24 g. Chamber pipes.

25 h. Carburetor pipes.

26 i. Electric pipes.

27 j. Air-driven pipes.

28 k. Chillums.

29 l. Bongs.

30 m. Ice pipes or chillers.

1 **SECTION 9. AMENDMENT.** Section 19-03.4-03 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **19-03.4-03. Unlawful possession of drug paraphernalia - Penalty.**

- 4 1. A person may not use or possess with intent to use drug paraphernalia to plant,
5 propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,
6 process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled
7 substance in violation of chapter 19-03.1. A person violating this subsection is guilty of
8 a class C felony if the drug paraphernalia is used, or possessed with intent to be used,
9 to manufacture, compound, convert, produce, process, prepare, test, or analyze a
10 controlled substance, other than marijuana or tetrahydrocannabinol, classified in
11 schedule I, II, or III of chapter 19-03.1.
- 12 2. A person may not use or possess with the intent to use drug paraphernalia to inject,
13 ingest, inhale, or otherwise induce into the human body a controlled substance, other
14 than marijuana or tetrahydrocannabinol, classified in schedule I, II, or III of
15 chapter 19-03.1. A person violating this subsection is guilty of a class A misdemeanor.
16 If a person previously has been convicted of an offense under this title, other than an
17 offense related to marijuana or tetrahydrocannabinol, or an equivalent offense from
18 another court in the United States, a violation of this subsection is a class C felony.
- 19 3. A person may not use or possess with intent to use drug paraphernalia to plant,
20 propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,
21 process, prepare, test, analyze, pack, or repack marijuana or tetrahydrocannabinol in
22 violation of chapter 19-03.1. A person violating this subsection is guilty of a class A
23 misdemeanor.
- 24 4. A person may not use or possess with the intent to use drug paraphernalia to ingest,
25 inhale, or otherwise introduce into the human body marijuana or tetrahydrocannabinol
26 or possess with the intent to use drug paraphernalia to store or contain marijuana or
27 tetrahydrocannabinol in violation of chapter 19-03.1. A person violating this subsection
28 is guilty of an ~~infraction~~ noncriminal offense punishable by a fee of up to fifty dollars.
29 If a person is subject to a fee or penalty under subdivision d of subsection 7 of section
30 19-03.1-23, the person may not be subject to a fee under this subsection.

1 5. A person sentenced to the legal and physical custody of the department of corrections
2 and rehabilitation under this section may be placed in a drug and alcohol treatment
3 program as designated by the department. Upon the successful completion of the drug
4 and alcohol treatment program, the department shall release the person from
5 imprisonment to begin any court-ordered period of probation. If the person is not
6 subject to court-ordered probation, the court may order the person to serve the
7 remainder of the sentence of imprisonment on supervised probation subject to the
8 terms and conditions imposed by the court.

9 6. Probation under this section may include placement in another facility, treatment
10 program, or drug court. If the person is placed in another facility or treatment program
11 upon release from imprisonment, the remainder of the sentence must be considered
12 as time spent in custody.

13 **SECTION 10. AMENDMENT.** Section 19-03.4-04 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **19-03.4-04. Unlawful manufacture or delivery of drug paraphernalia - Penalty.**

16 A person may not deliver, possess with intent to deliver, or manufacture with intent to
17 deliver, drug paraphernalia, if that person knows or should reasonably know that the drug
18 paraphernalia will be used to plant, propagate, cultivate, grow, harvest, manufacture,
19 compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain,
20 conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled
21 substance in violation of chapter 19-03.1. Any person violating this section is guilty of a class C
22 felony if the drug paraphernalia will be used to manufacture, compound, convert, produce,
23 process, prepare, test, inject, ingest, inhale, or analyze a controlled substance, other than
24 marijuana or tetrahydrocannabinol, classified in schedule I, II, or III of chapter 19-03.1.
25 Otherwise, a violation of this section is a class A misdemeanor.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1201

Page 1, line 1, after "reenact" insert "section 19-03.1-01, subdivision n of subsection 5 of section 19-03.1-05, subsection 1 of section 19-03.1-22.2, section 19-03.1-22.3,"

Page 1, line 1, remove the second "and"

Page 1, line 2, replace "section" with ", subsection 9 of section 19-03.1-23, subsection 1 of section 19-03.1-23.1, subsection 12 of section 19-03.4-01, and sections"

Page 1, line 2, after "19-03.4-03" insert "and 19-03.4-04"

Page 1, line 2, after "marijuana" insert "; and to provide a penalty"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 19-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-01. Definitions.

As used in this chapter and in chapters 19-03.2 and 19-03.4, unless the context otherwise requires:

1. "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:
 - a. A practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or
 - b. The patient or research subject at the direction and in the presence of the practitioner.
2. "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.
3. "Anabolic steroids" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids.
4. "Board" means the state board of pharmacy.
5. "Bureau" means the drug enforcement administration in the United States department of justice or its successor agency.
6. "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V as set out in this chapter.
7. "Controlled substance analog":

- a. Means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in a schedule I or II and:
 - (1) Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system which is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or
 - (2) With respect to a particular individual, which the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.
- b. Does not include:
 - (1) A controlled substance;
 - (2) Any substance for which there is an approved new drug application; or
 - (3) With respect to a particular individual, any substance, if an exemption is in effect for investigational use, for that individual, under section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355] to the extent conduct with respect to the substance is pursuant to the exemption.
- 8. "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.
- 9. "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance whether or not there is an agency relationship.
- 10. "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.
- 11. "Dispenser" means a practitioner who dispenses.
- 12. "Distribute" means to deliver other than by administering or dispensing a controlled substance.
- 13. "Distributor" means a person who distributes.
- 14. "Drug" means:
 - a. Substances recognized as drugs in the official United States pharmacopeia national formulary, or the official homeopathic pharmacopeia of the United States, or any supplement to any of them;

- b. Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals;
 - c. Substances, other than food, intended to affect the structure or any function of the body of individuals or animals; and
 - d. Substances intended for use as a component of any article specified in subdivision a, b, or c. The term does not include devices or their components, parts, or accessories.
15. ~~"Hashish" means the resin extracted from any part of the plant cannabis with or without its adhering plant parts, whether growing or not, and every compound, manufacture, salt, derivative, mixture, or preparation of the resin.~~
46. "Immediate precursor" means a substance:
- a. That the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use in the manufacture of a controlled substance;
 - b. That is an immediate chemical intermediary used or likely to be used in the manufacture of the controlled substance; and
 - c. The control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.
- 47.16. "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation or compounding of a controlled substance by an individual for the individual's own use or the preparation, compounding, packaging, or labeling of a controlled substance:
- a. By a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or
 - b. By a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.
- 48.17. "Marijuana" means all parts of the plant cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term does not include ~~the~~:
- a. ~~The~~ mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. ~~The term marijuana does not include hemp as defined in title 4.1~~

- b. Hemp as defined in chapter 4.1-18.1; or
 - c. A prescription drug approved by the United States food and drug administration under section 5050 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355].
- 19-18. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- a. Opium and opiate and any salt, compound, derivative, or preparation of opium or opiate.
 - b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision a, but not including the isoquinoline alkaloids of opium.
 - c. Opium poppy and poppy straw.
 - d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.
- 20-19. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term does not include, unless specifically designated as controlled under section 19-03.1-02, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes its racemic and levorotatory forms.
- 21-20. "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds.
- 22-21. "Over-the-counter sale" means a retail sale of a drug or product other than a controlled, or imitation controlled, substance.
- 23-22. "Person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.
- 24-23. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
- 25-24. "Practitioner" means:
- a. A physician, dentist, veterinarian, pharmacist, scientific investigator, or other person licensed, registered, or otherwise permitted by the jurisdiction in which the individual is practicing to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research.

- b. A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.
- ~~26-25.~~ "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.
- ~~27-26.~~ "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by a person, whether as principal, proprietor, agent, servant, or employee.
- ~~28-27.~~ "Scheduled listed chemical product" means a product that contains ephedrine, pseudoephedrin, or phenylpropanolamine, or each of the salts, optical isomers, and salts of optical isomers of each chemical, and that may be marketed or distributed in the United States under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] as a nonprescription drug unless prescribed by a licensed physician.
- ~~29-28.~~ "State" when applied to a part of the United States includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States.
- ~~30-29.~~ "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

SECTION 2. AMENDMENT. Subdivision n of subsection 5 of section 19-03.1-05 of the North Dakota Century Code is amended and reenacted as follows:

- n. (1) Tetrahydrocannabinols, meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, including synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant; ~~excluding tetrahydrocannabinols found in hemp as defined in title 4.1;~~ such as the following:
 - ~~(1)(a)~~ Delta-1 cis or trans tetrahydrocannabinol, and their optical isomers. Other names: Delta-9-tetrahydrocannabinol.
 - ~~(2)(b)~~ Delta-6 cis or trans tetrahydrocannabinol, and their optical isomers.
 - ~~(3)(c)~~ Delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

- (2) Tetrahydrocannabinols does not include tetrahydrocannabinols found in hemp as defined in chapter 4.1-18.1.

SECTION 3. AMENDMENT. Subsection 1 of section 19-03.1-22.2 of the North Dakota Century Code is amended and reenacted as follows:

1. For purposes of this section:
 - a. "Chemical substance" means a substance intended to be used as a precursor in the manufacture of a controlled substance or any other chemical intended to be used in the manufacture of a controlled substance. Intent under this subsection may be demonstrated by the substance's use, quantity, manner of storage, or proximity to other precursors or to manufacturing equipment.
 - b. "Child" means an individual who is under the age of eighteen years.
 - c. "Controlled substance" means the same as that term is defined in section 19-03.1-01, except the term does not include less than ~~one-half~~ one ounce [28.350 grams] of marijuana, less than five grams of tetrahydrocannabinol in concentrate form, or less than eight ounces [226.8 grams] of tetrahydrocannabinol in infused product form.
 - d. "Drug paraphernalia" means the same as that term is defined in section 19-03.4-01.
 - e. "Prescription" means the same as that term is described in section 19-03.1-22.
 - f. "Vulnerable adult" means a vulnerable adult as the term is defined in section 50-25.2-01.

SECTION 4. 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.

1. Except as provided in subsection 2, 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 A misdemeanor. This subsection does not apply to ingesting, inhaling, injecting, or otherwise taking into the body marijuana or tetrahydrocannabinol.
2. A person who is under twenty-one years of age and intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance that is marijuana, unless the substance was medical marijuana obtained in accordance with chapter 19-24.1, is guilty of a ~~class B-~~ misdemeanor or noncriminal offense punishable by a fee of up to fifty dollars.
3. 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."

Page 1, line 7, overstrike "in" and insert immediately thereafter:

"(a) In"

Page 1, line 10, overstrike "(2)" and insert immediately thereafter "(b)"

Page 1, line 12, overstrike "(3)" and insert immediately thereafter "(c)"

Page 1, line 14, replace "(4)" with "(d)"

Page 1, after line 14, insert:

"(2) Tetrahydrocannabinol in concentrate form:

- (a) In an amount less than five grams is guilty of a noncriminal offense punishable by a fee of up to fifty dollars.
- (b) At least five grams but not more than twelve and one-half grams is guilty of a class A misdemeanor.
- (c) More than twelve and one-half grams is guilty of a class C felony.

(3) Tetrahydrocannabinol in infused product form:

- (a) In an amount less than eight ounces [226.8 grams] is guilty of a noncriminal offense punishable by a fee of up to fifty dollars.
- (b) At least eight ounces [226.8 grams] but not more than sixteen ounces [253.6 grams] is guilty of a class A misdemeanor.
- (c) More than sixteen ounces [453.6 grams] is guilty of a class C felony.

SECTION 6. AMENDMENT. Subsection 9 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

- 9. If a person pleads guilty or is found guilty of a first offense regarding possession of less than one ounce [28.35 grams] or less of marijuana, less than five grams of tetrahydrocannabinol in concentrate form, or less than eight ounces [226.8 grams] of tetrahydrocannabinol in infused product form 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 1 of section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

- 1. A person who violates section 19-03.1-23 is subject to the penalties provided in subsection 2 if:
 - a. The offense 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 involved the manufacture, delivery, or possession, with intent to manufacture or deliver a controlled substance in, on, or within three hundred feet [91.4 meters] of the real property comprising a preschool facility, a public or private elementary or secondary school, or a public career and technical education school, the defendant was at least twenty-one years of age at the time

of the offense, and the offense involved the delivery of a controlled substance to a minor;

b. The offense involved:

- (1) Fifty grams or more of a mixture or substance containing a detectable amount of heroin;
- (2) Fifty grams or more of a mixture or substance containing a detectable amount of:
 - (a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
 - (b) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
 - (d) Any compound, mixture, or preparation that contains any quantity of any of the substance referred to in subparagraphs a through c;
- (3) Twenty-eight grams or more of a mixture or substance described in paragraph 2 which contains cocaine base;
- (4) Ten grams or more of phencyclidine or one hundred grams or more of a mixture or substance containing a detectable amount of phencyclidine;
- (5) One gram, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide;
- (6) Forty grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or ten grams or more of a mixture or substance containing a detectable amount of any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;
- (7) Fifty grams or more of a mixture or substance containing a detectable amount of methamphetamine;
- (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of 3,4-methylenedioxy-N-methylamphetamine, C₁₁H₁₅NO₂;
- (9) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of gamma-hydroxybutyrate or gamma-butyrolactone or 1,4-butanediol or any substance that is an analog of gamma-hydroxybutyrate; or

(10) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of flunitrazepam;
or

(11) Five hundred grams or more of marijuana; or

c. The defendant had a firearm in the defendant's actual possession at the time of the offense.

SECTION 8. AMENDMENT. Subsection 12 of section 19-03.4-01 of the North Dakota Century Code is amended and reenacted as follows:

12. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, or cocaine, hashish, or hashish oil into the human body, including:
- a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, ~~hashish heads~~, or punctured metal bowls.
 - b. Water pipes.
 - c. Carburetion tubes and devices.
 - d. Smoking and carburetion masks.
 - e. Objects, sometimes commonly referred to as roach clips, used to hold burning material, for example, a marijuana cigarette, that has become too small or too short to be held in the hand.
 - f. Miniature cocaine spoons and cocaine vials.
 - g. Chamber pipes.
 - h. Carburetor pipes.
 - i. Electric pipes.
 - j. Air-driven pipes.
 - k. Chillums.
 - l. Bongs.
 - m. Ice pipes or chillers."

Page 2, line 1, after "marijuana" insert "or tetrahydrocannabinol"

Page 2, line 5, after "marijuana" insert "or tetrahydrocannabinol"

Page 2, line 7, after "marijuana" insert "or tetrahydrocannabinol"

Page 2, line 12, after "marijuana" insert "or tetrahydrocannabinol"

Page 2, line 15, after "marijuana" insert "or tetrahydrocannabinol"

Page 2, line 16, after "marijuana" insert "or tetrahydrocannabinol"

Page 3, after line 2, insert:

"SECTION 10. AMENDMENT. Section 19-03.4-04 of the North Dakota Century Code is amended and reenacted as follows:

19-03.4-04. Unlawful manufacture or delivery of drug paraphernalia - Penalty.

A person may not deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, if that person knows or should reasonably know that the drug paraphernalia will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of chapter 19-03.1. Any person violating this section is guilty of a class C felony if the drug paraphernalia will be used to manufacture, compound, convert, produce, process, prepare, test, inject, ingest, inhale, or analyze a controlled substance, other than marijuana or tetrahydrocannabinol, classified in schedule I, II, or III of chapter 19-03.1. Otherwise, a violation of this section is a class A misdemeanor."

Renumber accordingly

Senator,

Due to the issues with medical marijuana, I am in agreement with this bill.

It is almost impossible to find a doctor for medical and the state health department will not even provide a list of doctors that participate.

I know many that use, and it is for many reasons such as nausea, sleep aid, seizures etc.

If one would choose to use medical, they would lose their concealed weapons permit.

This bill also should be passed so that continued initiated measures are not needed.

There are many health benefits for the public there are also many using it illegal already and I know some in the ND government!

Thank you,

Mr. Mitchell S. Sanderson



Working to Reform Marijuana Laws

My name is Carly Wolf, State Policies Manager for The National Organization for the Reform of Marijuana Laws (NORML). I wish to thank the Chair and members of the Committee for considering my testimony in favor of House Bill 1201. NORML is supportive of legislative efforts to remove criminal penalties for the possession of personal use quantities of cannabis by adults.

House Bill 1201 amends state law so that the possession of up to one ounce of marijuana is classified as a civil rather than as a criminal offense -- punishable by a ticket of up to \$50.

Legislation enacted in 2019 reclassified the possession of up to one-half ounce of cannabis and/or the personal possession of marijuana-related paraphernalia for a first-time offender from a criminal misdemeanor, punishable by up to 30 days in jail, to a criminal infraction -- punishable by a fine but no possibility of jail time.

Nonetheless, under the law, offenders are still saddled with the stigma and lost opportunities associated with a lifelong criminal record -- despite lacking the possibility of jail time. By contrast, the enactment of HB 1201 would continue to discourage marijuana abuse while halting the practice of permanently criminalizing thousands of otherwise law-abiding citizens of North Dakota.

Decriminalizing low-level marijuana offenses will ensure that minor marijuana possession offenders, many of them young people, are not saddled with a criminal record and the lifelong penalties and stigma associated with it.

The American Civil Liberties Union research report, *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform* (2020) concluded: "On average, a Black person is 3.64 times more likely to be arrested for marijuana possession than a white person, even though Black and white people use marijuana at similar rates. Just as before, such racial disparities in marijuana possession arrests exist across the country, in every state, in counties large and small, urban and rural, wealthy and poor, and with large and small Black populations."¹

Findings in this same report show that in North Dakota in 2018, almost 2,700 individuals were arrested for marijuana law violations. Of those arrested, 94 percent of defendants were charged with possession only. Arrests for the possession of marijuana in the state made up almost half of all drug arrests in 2018.

Black people in North Dakota are more than five times as likely to be arrested for marijuana-related violations as are white people. In places like Morton, Black people are almost

¹ <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>





Working to Reform Marijuana Laws

ten times as likely to be arrested for marijuana possession than white people. North Dakota ranks 7th in the nation for largest racial disparities in marijuana arrests.

If lawmakers truly wish to reap the societal and fiscal benefits of decriminalization, and truly wish to significantly reduce the number of North Dakota adults adversely impacted by a criminal record, then I urge members of the committee to support the passage of HB 1201, to fully decriminalize the possession of up to one ounce of cannabis by adults.



2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1201, PM
3/10/2021

Relating to Marijuana

Hearing called to order, all senators are present: **Myrdal, Luick, Dwyer, Bakke, Heitkamp, Fors, and Larson.** [3:30]

Discussion Topics:

- Decriminalizing use of marijuana and THC
- Clarification of Amendment
- Definition of controlled substances & marijuana

Senator Dwyer [3:40] moved amendment 21.0542.01001

Senator Luick [3:40] seconded the motion

The motion Failed 1-6-0

Senators	Vote
Senator Janne Myrdal	N
Senator Michael Dwyer	N
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	N
Senator Jason G. Heitkamp	N
Senator Larry Luick	N
Senator Diane Larson	N

Senator Heitkamp [3:44] moved to DO NOT PASS HB 1201

Senator Myrdal [3:44] seconded the motion

The motion to DO NOT PASS, passed

6-1-0

Senator Larson Carried

Senators	Vote
Senator Janne Myrdal	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	N
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Diane Larson	Y

Hearing adjourned [3:44]

Jamal Omar, Committee Clerk

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1201

Page 1, line 1, after "reenact" insert "section 19-03.1-01, subdivision n of subsection 5 of section 19-03.1-05, subsection 1 of section 19-03.1-22.2, section 19-03.1-22.3,"

Page 1, line 1, remove the second "and"

Page 1, line 2, replace "section" with ", subsection 9 of section 19-03.1-23, subsection 1 of section 19-03.1-23.1, subsection 12 of section 19-03.4-01, and sections"

Page 1, line 2, after "19-03.4-03" insert "and 19-03.4-04"

Page 1, line 2, after "marijuana" insert "; and to provide a penalty"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 19-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-01. Definitions.

As used in this chapter and in chapters 19-03.2 and 19-03.4, unless the context otherwise requires:

1. "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:
 - a. A practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or
 - b. The patient or research subject at the direction and in the presence of the practitioner.
2. "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.
3. "Anabolic steroids" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids.
4. "Board" means the state board of pharmacy.
5. "Bureau" means the drug enforcement administration in the United States department of justice or its successor agency.
6. "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V as set out in this chapter.
7. "Controlled substance analog":

- a. Means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in a schedule I or II and:
 - (1) Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system which is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or
 - (2) With respect to a particular individual, which the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.
- b. Does not include:
 - (1) A controlled substance;
 - (2) Any substance for which there is an approved new drug application; or
 - (3) With respect to a particular individual, any substance, if an exemption is in effect for investigational use, for that individual, under section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355] to the extent conduct with respect to the substance is pursuant to the exemption.
- 8. "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.
- 9. "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance whether or not there is an agency relationship.
- 10. "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.
- 11. "Dispenser" means a practitioner who dispenses.
- 12. "Distribute" means to deliver other than by administering or dispensing a controlled substance.
- 13. "Distributor" means a person who distributes.
- 14. "Drug" means:
 - a. Substances recognized as drugs in the official United States pharmacopeia national formulary, or the official homeopathic pharmacopeia of the United States, or any supplement to any of them;

- b. Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals;
 - c. Substances, other than food, intended to affect the structure or any function of the body of individuals or animals; and
 - d. Substances intended for use as a component of any article specified in subdivision a, b, or c. The term does not include devices or their components, parts, or accessories.
15. ~~"Hashish" means the resin extracted from any part of the plant cannabis with or without its adhering plant parts, whether growing or not, and every compound, manufacture, salt, derivative, mixture, or preparation of the resin.~~
46. "Immediate precursor" means a substance:
- a. That the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use in the manufacture of a controlled substance;
 - b. That is an immediate chemical intermediary used or likely to be used in the manufacture of the controlled substance; and
 - c. The control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.
- 47.16. "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation or compounding of a controlled substance by an individual for the individual's own use or the preparation, compounding, packaging, or labeling of a controlled substance:
- a. By a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or
 - b. By a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.
- 48.17. "Marijuana" means all parts of the plant cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term does not include ~~the~~:
- a. ~~The~~ mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. ~~The term marijuana does not include hemp as defined in title 4.1~~

- b. Hemp as defined in chapter 4.1-18.1; or
 - c. A prescription drug approved by the United States food and drug administration under section 5050 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355].
- 19-18. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- a. Opium and opiate and any salt, compound, derivative, or preparation of opium or opiate.
 - b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision a, but not including the isoquinoline alkaloids of opium.
 - c. Opium poppy and poppy straw.
 - d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.
- 20-19. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term does not include, unless specifically designated as controlled under section 19-03.1-02, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes its racemic and levorotatory forms.
- 21-20. "Opium poppy" means the plant of the species papaver somniferum L., except its seeds.
- 22-21. "Over-the-counter sale" means a retail sale of a drug or product other than a controlled, or imitation controlled, substance.
- 23-22. "Person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.
- 24-23. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
- 25-24. "Practitioner" means:
- a. A physician, dentist, veterinarian, pharmacist, scientific investigator, or other person licensed, registered, or otherwise permitted by the jurisdiction in which the individual is practicing to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research.

- b. A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.
- ~~26-25.~~ "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.
- ~~27-26.~~ "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by a person, whether as principal, proprietor, agent, servant, or employee.
- ~~28-27.~~ "Scheduled listed chemical product" means a product that contains ephedrine, pseudoephedrin, or phenylpropanolamine, or each of the salts, optical isomers, and salts of optical isomers of each chemical, and that may be marketed or distributed in the United States under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] as a nonprescription drug unless prescribed by a licensed physician.
- ~~29-28.~~ "State" when applied to a part of the United States includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States.
- ~~30-29.~~ "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

SECTION 2. AMENDMENT. Subdivision n of subsection 5 of section 19-03.1-05 of the North Dakota Century Code is amended and reenacted as follows:

- n. (1) Tetrahydrocannabinols, meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, including synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant; ~~excluding tetrahydrocannabinols found in hemp as defined in title 4.1;~~ such as the following:

- ~~(1)~~(a) Delta-1 cis or trans tetrahydrocannabinol, and their optical isomers. Other names: Delta-9-tetrahydrocannabinol.
- ~~(2)~~(b) Delta-6 cis or trans tetrahydrocannabinol, and their optical isomers.
- ~~(3)~~(c) Delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

- (2) Tetrahydrocannabinols does not include tetrahydrocannabinols found in hemp as defined in chapter 4.1-18.1.

SECTION 3. AMENDMENT. Subsection 1 of section 19-03.1-22.2 of the North Dakota Century Code is amended and reenacted as follows:

1. For purposes of this section:
 - a. "Chemical substance" means a substance intended to be used as a precursor in the manufacture of a controlled substance or any other chemical intended to be used in the manufacture of a controlled substance. Intent under this subsection may be demonstrated by the substance's use, quantity, manner of storage, or proximity to other precursors or to manufacturing equipment.
 - b. "Child" means an individual who is under the age of eighteen years.
 - c. "Controlled substance" means the same as that term is defined in section 19-03.1-01, except the term does not include less than ~~one-half~~ one ounce [28.350 grams] of marijuana, less than five grams of tetrahydrocannabinol in concentrate form, or less than eight ounces [226.8 grams] of tetrahydrocannabinol in infused product form.
 - d. "Drug paraphernalia" means the same as that term is defined in section 19-03.4-01.
 - e. "Prescription" means the same as that term is described in section 19-03.1-22.
 - f. "Vulnerable adult" means a vulnerable adult as the term is defined in section 50-25.2-01.

SECTION 4. 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.

1. Except as provided in subsection 2, 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 A misdemeanor. This subsection does not apply to ingesting, inhaling, injecting, or otherwise taking into the body marijuana or tetrahydrocannabinol.
2. A person who is under twenty-one years of age and intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance that is marijuana, unless the substance was medical marijuana obtained in accordance with chapter 19-24.1, is guilty of a ~~class B-~~ misdemeanor or noncriminal offense punishable by a fee of up to fifty dollars.
3. 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."

Page 1, line 7, overstrike "in" and insert immediately thereafter:

"(a) In"

Page 1, line 10, overstrike "(2)" and insert immediately thereafter "(b)"

Page 1, line 12, overstrike "(3)" and insert immediately thereafter "(c)"

Page 1, line 14, replace "(4)" with "(d)"

Page 1, after line 14, insert:

"(2) Tetrahydrocannabinol in concentrate form:

- (a) In an amount less than five grams is guilty of a noncriminal offense punishable by a fee of up to fifty dollars.
- (b) At least five grams but not more than twelve and one-half grams is guilty of a class A misdemeanor.
- (c) More than twelve and one-half grams is guilty of a class C felony.

(3) Tetrahydrocannabinol in infused product form:

- (a) In an amount less than eight ounces [226.8 grams] is guilty of a noncriminal offense punishable by a fee of up to fifty dollars.
- (b) At least eight ounces [226.8 grams] but not more than sixteen ounces [253.6 grams] is guilty of a class A misdemeanor.
- (c) More than sixteen ounces [453.6 grams] is guilty of a class C felony.

SECTION 6. AMENDMENT. Subsection 9 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

- 9. If a person pleads guilty or is found guilty of a first offense regarding possession of less than one ounce [28.35 grams] or less of marijuana, less than five grams of tetrahydrocannabinol in concentrate form, or less than eight ounces [226.8 grams] of tetrahydrocannabinol in infused product form 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 1 of section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

- 1. A person who violates section 19-03.1-23 is subject to the penalties provided in subsection 2 if:
 - a. The offense 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 involved the manufacture, delivery, or possession, with intent to manufacture or deliver a controlled substance in, on, or within three hundred feet [91.4 meters] of the real property comprising a preschool facility, a public or private elementary or secondary school, or a public career and technical education school, the defendant was at least twenty-one years of age at the time

of the offense, and the offense involved the delivery of a controlled substance to a minor;

b. The offense involved:

- (1) Fifty grams or more of a mixture or substance containing a detectable amount of heroin;
- (2) Fifty grams or more of a mixture or substance containing a detectable amount of:
 - (a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
 - (b) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
 - (d) Any compound, mixture, or preparation that contains any quantity of any of the substance referred to in subparagraphs a through c;
- (3) Twenty-eight grams or more of a mixture or substance described in paragraph 2 which contains cocaine base;
- (4) Ten grams or more of phencyclidine or one hundred grams or more of a mixture or substance containing a detectable amount of phencyclidine;
- (5) One gram, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide;
- (6) Forty grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or ten grams or more of a mixture or substance containing a detectable amount of any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;
- (7) Fifty grams or more of a mixture or substance containing a detectable amount of methamphetamine;
- (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of 3,4-methylenedioxy-N-methylamphetamine, C₁₁H₁₅NO₂;
- (9) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of gamma-hydroxybutyrate or gamma-butyrolactone or 1,4-butanediol or any substance that is an analog of gamma-hydroxybutyrate; or

(10) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of flunitrazepam;
or

(11) Five hundred grams or more of marijuana; or

c. The defendant had a firearm in the defendant's actual possession at the time of the offense.

SECTION 8. AMENDMENT. Subsection 12 of section 19-03.4-01 of the North Dakota Century Code is amended and reenacted as follows:

12. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, or cocaine, hashish, or hashish oil into the human body, including:
- a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, ~~hashish heads~~, or punctured metal bowls.
 - b. Water pipes.
 - c. Carburetion tubes and devices.
 - d. Smoking and carburetion masks.
 - e. Objects, sometimes commonly referred to as roach clips, used to hold burning material, for example, a marijuana cigarette, that has become too small or too short to be held in the hand.
 - f. Miniature cocaine spoons and cocaine vials.
 - g. Chamber pipes.
 - h. Carburetor pipes.
 - i. Electric pipes.
 - j. Air-driven pipes.
 - k. Chillums.
 - l. Bongs.
 - m. Ice pipes or chillers."

Page 2, line 1, after "marijuana" insert "or tetrahydrocannabinol"

Page 2, line 5, after "marijuana" insert "or tetrahydrocannabinol"

Page 2, line 7, after "marijuana" insert "or tetrahydrocannabinol"

Page 2, line 12, after "marijuana" insert "or tetrahydrocannabinol"

Page 2, line 15, after "marijuana" insert "or tetrahydrocannabinol"

Page 2, line 16, after "marijuana" insert "or tetrahydrocannabinol"

Page 3, after line 2, insert:

"SECTION 10. AMENDMENT. Section 19-03.4-04 of the North Dakota Century Code is amended and reenacted as follows:

19-03.4-04. Unlawful manufacture or delivery of drug paraphernalia - Penalty.

A person may not deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, if that person knows or should reasonably know that the drug paraphernalia will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of chapter 19-03.1. Any person violating this section is guilty of a class C felony if the drug paraphernalia will be used to manufacture, compound, convert, produce, process, prepare, test, inject, ingest, inhale, or analyze a controlled substance, other than marijuana or tetrahydrocannabinol, classified in schedule I, II, or III of chapter 19-03.1. Otherwise, a violation of this section is a class A misdemeanor."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1201: Judiciary Committee (Sen. Larson, Chairman) recommends **DO NOT PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1201 was placed on the Fourteenth order on the calendar.