

2021 HOUSE JUDICIARY

HB 1287

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

HB 1287

1/27/2021

Relating to overdose prevention and immunity; and to provide a penalty.

Chairman Klemin called the hearing to order at 11:30 AM.

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

Discussion Topics:

- Penalties
- Loopholes in current law
- Amendments

Rep. K. Koppelman: Introduced the bill. Testimony #3810 11:32

David Zibolski, Chief of Police of Fargo, ND: Testimony #3604. 11:54

Dennis Otterness, Chief of Police, West Fargo Police Dept. Testimony # 3674

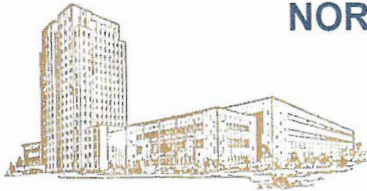
James Knopik, Behavioral Health Division, Dept of Human Services: Testimony #3632

Chairman Klemin closed the hearing at 12:20 PM.

Additional written testimony: # 3714, # 3708

Stopped 12:20

DeLores D. Shimek by Donna Whetham
Committee Clerk



NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Kim Koppelman

District 13
513 First Avenue NW
West Fargo, ND 58078-1101
B: 701-492-7317
kkoppelman@nd.gov

Speaker of the House

Testimony in support of House Bill 1287

Mr. Chairman and Members of the House Judiciary Committee, today, I bring House Bill 1287 before you and encourage your favorable consideration of this bill. The bill seeks to make two constructive changes to North Dakota law.

The first is to make the penalties, under law, for actions which result in the death of another person, consistent. The second is to close a dangerous loophole in current law.

When even activity such as driving an automobile results in the death of another person, enhanced penalties are available and such charges can be brought, when appropriate, yet when the actions of the drug traffickers who are profiting from pushing illegal drugs in our communities, often resulting in the addiction of young people and adults, alike, result in an overdose so severe that the it kills the user, the penalty is the same as that for merely distributing a controlled substance. In other words, there is no enhancement of penalty available, as there is for other offenses. This is a flaw in the North Dakota Century Code which needs to be fixed.

This bill, therefore, creates the availability of an enhanced charge in the most egregious circumstances. This, of course, would be based upon the facts of each case as well as the evidence available and prosecutors, working with law enforcement officials, would determine when and if bringing such an enhanced charge would be appropriate.

With the proliferation of drugs and the rates of addiction in our state, this is an important enhancement to help reduce this problem.

You may recall that, in recent years, we have passed legislation involving drug overdoses which is sometimes referred to as a Good Samaritan Law. This statute provides that people will not be prosecuted if they call for help when someone is experiencing an overdose. This is a good law and it can save lives by removing the fear of prosecution which can delay or prevent the response necessary to save the life of someone in this condition.

There is a problem with this law, however, stemming from the language which also exempts from responsibility, those who are merely “sharing” drugs at such an event. The problem lies in the term “sharing”. There is no definition of the word in the law and drug traffickers can hide behind the term “sharing” if there is not conclusive proof that they were actually trafficking, delivering or selling the drugs. As a result, those who are providing these addicting and frequently deadly substances, and making a lot of money doing it, often escape responsibility for their actions.

There are a few ways this problem might be solved. One, as the bill before you, in its original form, provides, is simply removing the language involving “sharing” from the statute. If there is concern that this might thwart the intent of the original law, however, another approach may be to define “sharing” in such a way that it excludes drug traffickers, while still holding harmless those who the law originally sought to protect.

We need to solve the problem without causing doubt about the immunity the statute originally offered, which could delay or prevent the call for help we all want to occur.

Mr. Chairman and Members of the Committee, I am providing two potential amendments for your consideration and I trust your judgment, after your deliberations, to put this bill in the best form possible, after which I encourage your “Do Pass” recommendation for House Bill 1287.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1287

Page 1, after line 13, insert:

"1."

Page 2, line 1, remove the overstrike over "~~or for the sharing of controlled substances among these~~"

Page 2, line 2, remove the overstrike over "~~present~~"

Page 2, after line 6, insert:

"2. As used in this section, "sharing" does not include selling, distributing, dispensing, delivering, or forcing an individual to ingest, inject, inhale, or otherwise introduce into the body, a controlled substance."

Renumber accordingly

Introduced by

Representatives K. Koppelman, Jones, Klemin, Satrom

1 A BILL for an Act to create and enact subdivision d to subsection 1 of section 19-03.1-23.1 of
 2 the North Dakota Century Code, relating to an enhanced penalty for the death of an individual
 3 as a result of a drug overdose; to amend and reenact section 19-03.1-23.4 of the North Dakota
 4 Century Code, relating to overdose prevention and immunity; and to provide a penalty.

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

6 **SECTION 1.** Subdivision d of subsection 1 of section 19-03.1-23.1 of the North Dakota
 7 Century Code is created and enacted as follows:

8 d. The defendant sells, distributes, ~~shares, or otherwise provides~~ delivers, or
 9 conspires to deliver a controlled substance to an individual which results in the
 10 death of the individual due to ~~a drug overdose~~ the use of that controlled
 11 substance and the death of the individual would not have occurred in the
 12 absence of the defendant's conduct. This subdivision does not apply to an
 13 individual who is immune from prosecution under section 19-03.1-23.4.

14 **SECTION 2. AMENDMENT.** Section 19-03.1-23.4 of the North Dakota Century Code is
 15 amended and reenacted as follows:

16 **19-03.1-23.4. Overdose prevention and immunity.**

17 1. An ~~Except as otherwise provided in subdivision d of subsection 1 of section~~
 18 ~~19-03.1-23.1, an~~ individual is immune from criminal prosecution under sections
 19 19-03.1-22.1, 19-03.1-22.3, 19-03.1-22.5, subsection 7 of section 19-03.1-23,
 20 subsection 3 of section 19-03.2-03, and section 19-03.4-03 if in good faith that
 21 individual seeks medical assistance for another individual in need of emergency
 22 medical assistance due to a drug overdose.
 23 2. To receive immunity under this section, the individual receiving immunity must have
 24 remained on the scene until assistance arrived, cooperated with the medical treatment

1 of the reported drug overdosed individual, and the overdosed individual must have
2 been in a condition a layperson would reasonably believe to be a drug overdose
3 requiring immediate medical assistance. Neither the individual who experiences a
4 drug-related overdose and is in need of emergency medical assistance nor the
5 cooperating individual seeking medical assistance may be charged or prosecuted for
6 the criminal offenses listed in this section or for the sharing of controlled substances
7 among those present.

8 3. In determining whether a situation constitutes sharing under this section, a court may
9 consider factors including whether multiple individuals:

10 a. Pooled their money to purchase the controlled substance;

11 b. Used the controlled substance with the individual who overdosed; or

12 c. Were present when the overdose occurred.

13 4. An individual who delivered or possessed with intent to deliver a controlled substance
14 solely for pecuniary gain is not eligible for immunity under this section.

15 5. Immunity from prosecution under this section does not apply unless the evidence for
16 the charge or prosecution was obtained as a result of the drug-related overdose and
17 the need for emergency medical assistance. Good faith does not include seeking
18 medical assistance during the course of the execution of an arrest warrant or search
19 warrant or during a lawful search.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1287

Page 1, line 8, replace "shares, or otherwise provides" with "delivers, or conspires to deliver"

Page 1, line 9, remove "a"

Page 1, line 10, replace "drug overdose" with "the use of that controlled substance and the death of the individual would not have occurred in the absence of the defendant's conduct. This subdivision does not apply to an individual who is immune from prosecution under section 19-03.1-23.4"

Page 1, after line 13 insert:

"1."

Page 1, line 14, remove the overstrike over "An"

Page 1, line 14, remove "Except as otherwise provided in subdivision d of subsection 1 of section 19-03.1-23.1, an"

Page 1, line 18, after the period insert:

"2."

Page 2, line 1, remove the overstrike over "~~or for the sharing of controlled substances among these~~"

Page 2, line 2, remove the overstrike over "~~present~~"

Page 2, after line 2 insert:

"3. In determining whether a situation constitutes sharing under this section, a court may consider factors including whether multiple individuals:

a. Pooled their money to purchase the controlled substance;

b. Used the controlled substance with the individual who overdosed; or

c. Were present when the overdose occurred.

4. An individual who delivered or possessed with intent to deliver a controlled substance solely for pecuniary gain is not eligible for immunity under this section.

"5."

Renumber accordingly



CITY OF FARGO POLICE DEPARTMENT

Chief David B. Zibolski



105 25th Street North, Fargo, North Dakota 58102

Office: 701-241-1400 Fax: 701-297-7789

www.fargopolice.com

January 26, 2021

Representative Klemin, Chair
North Dakota House Judiciary Committee
Bismarck, ND

RE: HB 1287

Dear Chairman Klemin and members of the Committee,

My name is David Zibolski and I am the newly appointed Chief of Police in Fargo. I am a 36-year law enforcement professional, having worked in various ranks within the Milwaukee Police Department, Deputy Administrator with the Wisconsin Department of Justice, and served as chief in two departments—Beloit, WI and now Fargo.

I testify before you today in strong support of HB 1287 with suggested language revisions submitted by the Cass County State Attorney's Office to safeguard the Good Samaritan Immunity provision. In the City of Fargo, our overdoses have increased dramatically from 2019 (36) to 2020 (91) and have been on an upward trend since 2018 (30). Most disconcerting is the rapid increase in fatal overdoses, from 11 in 2019 to 18 in 2020. As of January 25, 2021, we have experienced nine (9) overdoses with two (2) fatalities. Toxicology data from the fatal cases show a variety of poly-drug mixtures involving Fentanyl and other drugs.

I have learned from our narcotics investigators that in some of the fatal overdose cases they have identified the same person or persons to be involved in the delivery of narcotics that have caused a fatal overdose in our community. These individuals are not the addict-to-addict dealers, but in fact are insidious criminals who deliver a variety of narcotic mixtures, regardless of its fatal potency or components, for the sole purpose of criminal enterprise. They are not using and then calling EMS after a fatal overdose, they are delivering dangerous narcotics to further their criminal gains and simply walking away.

Unfortunately, this crime does not have a penalty enhancer, so a trafficker faces no additional penalty for causing a fatal overdose than they do for merely delivering a narcotic to a user. This is a critical gap in criminal accountability, as well as an oversight in safeguarding legitimate victims of these treacherous crimes.

ADMINISTRATION
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INVESTIGATIONS
Phone: 701-241-1405
Fax: 701-241-1407

RECORDS
Phone: 701-241-1420
Fax: 701-241-8272

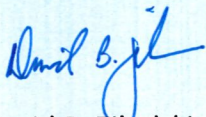
NON EMERGENCY
Phone: 701-235-4493

Currently, law enforcement in North Dakota has no ability to hold these individuals responsible in a meaningful way. Federal cases offer an enhanced penalty, but are few and far between and in most cases venue cannot be established for such a case. Just as in other crimes (armed robbery, burglary, etc.) in which the victim is killed as a result, trafficking narcotics that cause an overdose should expose the offender to an enhanced Class A Felony.

This bill with submitted revisions, does not seek to diminish in any way the previously legislated immunity provisions for those who are using together and an overdose occurs and the person calls EMS and remains on scene to cooperate with authorities. I support this provision, but seek an enhanced penalty for hard-core criminals who are killing our community members and adversely affecting our families. The final decision in terms of prosecution will rest with State Attorney's, which will ensure appropriate application of the enhanced penalty without compromising Good Samaritan safeguards. On January 25, 2021, the Fargo City Commission endorsed this bill with the referenced language revisions.

Thank you for the opportunity to testify before you today. I am happy to answer any questions you may have. I have also attached Fargo Police Department overdose data for 2016-2020 for reference.

Sincerely,



David B. Zibolski
Chief of Police
City of Fargo
dzibolski@fargond.gov
701-241-1401



Fargo Police Department

To: Chief David Zibolski

From: Sgt. Matt Christensen *MDC*
Narcotics Unit

Date: January 19th, 2021

Re: Overdoses – December 2020

From December 1st, 2020 to December 31st, 2020 there were a total of 14 non-fatal overdoses and 5 fatal overdoses. From January 1st, 2020 to December 31st, 2020 there have been a total of 73 non-fatal overdoses and 18 fatal overdoses reported in the city of Fargo, ND.

2016-2020 FARGO OVERDOSE COMPARISON

	2016		2017		2018		2019		2020	
	2016 Non-Fatal	2016 Fatal	2017 Non-Fatal	2017 Fatal	2018 Non-Fatal	2018 Fatal	2019 Non-Fatal	2019 Fatal	2020 Non-Fatal	2020 Fatal
January	0	1	2	0	1	2	1	0	1	1
February	1	0	1	2	0	0	1	1	3	2
March	6	3	2	0	0	0	1	2	3	0
April	6	2	4	4	1	1	2	0	5	1
May	7	0	2	1	0	0	3	1	6	4
June	2	1	2	1	1	1	5	1	4	1
July	7	0	0	3	1	1	3	1	14	0
August	4	0	0	2	5	2	2	0	8	1
September	3	1	2	2	3	0	2	0	6	2
October	5	1	4	2	2	1	0	2	3	1
November	7	4	0	3	3	1	1	1	6	0
December	7	2	2	0	2	2	4	2	14	5
Totals	55	15	21	20	19	11	25	11	73	18

RECEIVED 1/19/21
LT. MAT SANDERS *MS*

Received 1/19/21
De Anderson *AM*
Ref: Chief Zibolski



West Fargo Police Department

800 4th Ave E, Suite 2 West Fargo, ND 58078 | 701-433-5500 | westfargopolice.com

Denis E. Otterness
Chief of Police

House Bill 1287

Good morning Chairman Klemin and members of the House Judiciary Committee. I want to thank you for the opportunity to be here today. My name is Denis Otterness and I am the Chief of Police for the City of West Fargo. I have been a sworn law enforcement officer for the past 30 years and have served in my current role since September of last year.

I am appearing before you and offering my testimony today in full support of House Bill 1287. During my 30 year law enforcement career I have spent a great deal of time addressing, responding to, and witnessing first-hand the damage and destruction that controlled substances cause daily to our communities and families.

By way of background, I think it's important you know that prior to coming to West Fargo I spent a majority of my 30 year law enforcement career working for the City of Bloomington, Minnesota, a suburb of Minneapolis, Minnesota. During this time I worked 10 ½ years in my department's Special Investigation Unit, in an undercover capacity, primarily investigating drug and human trafficking cases. For nearly eight of those years I was assigned to the Drug Enforcement Administration as a Task Force Officer investigating, disrupting and dismantling large scale drug trafficking organizations. Following my assignment at the Drug Enforcement Administration I spent nearly six years testifying as an expert witness in United States District Court, in the District of Minnesota, in Federal drug and firearms trafficking trials.

I was involved in conducting drug trafficking investigations on a local, regional and national level as the nationwide opioid epidemic took hold on our communities and drug trafficking cartels began to flood our communities with Methamphetamine that was nearing 100 percent purity. The surge in opioid related use, mainly heroin at that time, along with methamphetamine use was astonishing. It is important to know as well that Minneapolis, a source location for drug traffickers in the Fargo/Moorhead/West Fargo region, was well known to have some of the most potent and pure heroin in the entire United States.

Over the course of the last several years a new and more deadly trend has emerged in drug trafficking, the sale of synthetic opioids such as Fentanyl and Carfentanil, along with its use as a cutting/mixing agent in other controlled substances, particularly heroin. This trend, along with the spiking increase in heroin use has led to an explosion in overdoses and overdose-related deaths in our communities.

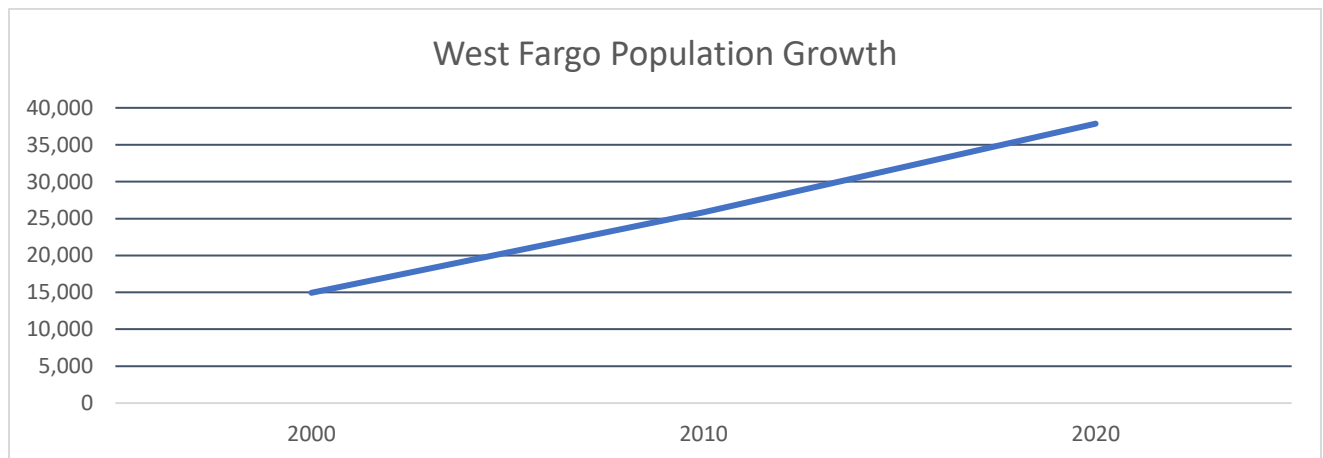


West Fargo Police Department

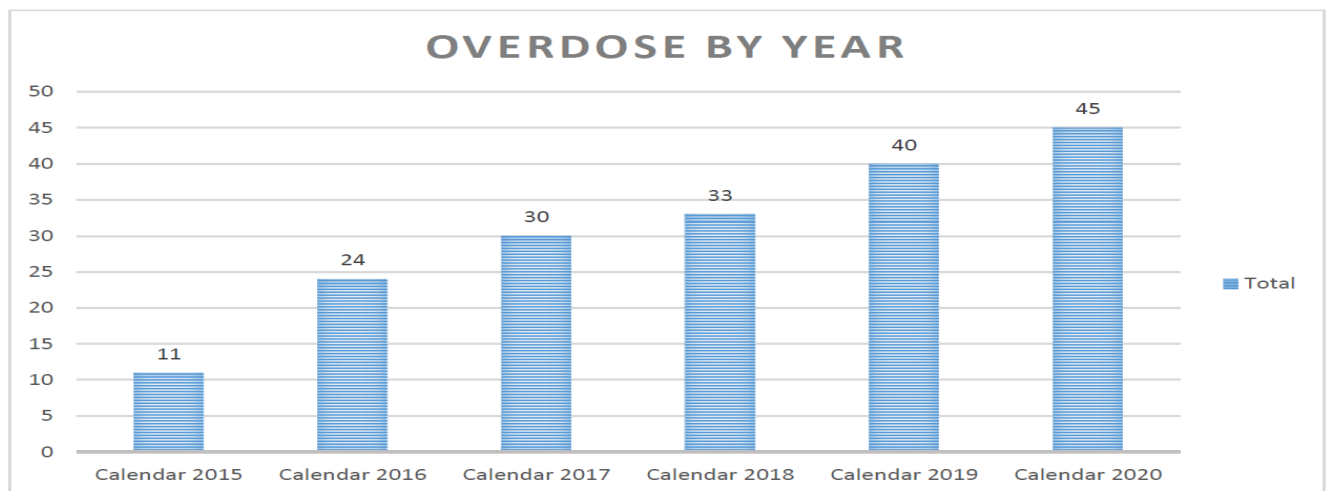
800 4th Ave E, Suite 2 West Fargo, ND 58078 | 701-433-5500 | westfargopolice.com

Denis E. Otterness
Chief of Police

The City of West Fargo has experienced a tremendous amount of growth over the last 15 - 20 years. I want to provide you just a snapshot of how reported overdoses have impacted the City of West Fargo over the past five years. Below you will find two graphs, one that outlines our community's growth over the last 20 years and the other that details the number of narcotics related overdoses that my officers have responded to since 2015.



Source: Wikipedia



Source: West Fargo Police Department



West Fargo Police Department

800 4th Ave E, Suite 2 West Fargo, ND 58078 | 701-433-5500 | westfargopolice.com

Denis E. Otterness
Chief of Police

Many law enforcement leaders, particularly those in communities that have made Narcan widely available, understand we are receiving and reporting overdose statistics that are likely the tip of the iceberg. With the prevalence of Narcan it is widely known that many more overdoses are occurring in our communities than are being reported to law enforcement. Narcan is also only effective in addressing opioid-related overdoses.

I am a very strong proponent of treatment options for low-level offenders and those struggling with addictions. I am also, however, steadfast in my belief that there needs to be a tool in place to hold drug traffickers accountable, particularly those that are responsible for distributing narcotics that are causing the death of so many members of our communities. As it stands right now, there is no means to prosecute those responsible for causing the overdose death of someone by trafficking in controlled substances. In other words, you can sell someone controlled substances and sell someone controlled substances that causes an overdose death and the penalties are the same.

I want to thank you again for the opportunity to be here today and will answer any questions you might have. Thanks again!

Denis Otterness
Chief of Police

Testimony
House Bill 1287 - Department of Human Services
House Judiciary Committee
Representative Klemin, Chairman
January 27, 2021

Chairman Klemin and members of the House Judiciary Committee, I am James Knopik, behavioral health administrator, with the Department of Human Services' Behavioral Health Division (Department). I appear today to provide testimony in opposition to House Bill 1287.

The current immunity offered in North Dakota Century Code section 19-03.1-23.4 is intended to save lives by allowing individuals the opportunity to report an overdose without the fear of legal ramifications. Overdose deaths in North Dakota increased from 43 in 2014 to 73 in 2019. (CDC Injury Center, NDDOH) The Department, in partnership with community organizations, has invested in overdose prevention efforts including the distribution of naloxone and community level trainings in overdose response. House Bill 1287 would result in a setback to our state's attempts to address overdoses. The proposed language in this Bill would render the existing protections for reporting an overdose basically useless jeopardizing lives due to the fear of legal prosecution.

Additionally, since 2014 there has been a multi-branch effort to address gaps in the state's behavioral health system. A priority of this work has been to reduce criminal justice involvement for those with behavioral health needs. House Bill 1287 may lead to criminalizing behavioral health conditions which will lead to unnecessary growth in the criminal justice system.

Imagine a scenario in which your brother, who is struggling with an opioid use disorder, shares his prescription opioids with a friend, who dies from an overdose.

With the passage of this Bill your brother would be charged with a criminal offense even if he called 9-1-1 during his friend's overdose.

This concludes my testimony, and I am happy to answer any questions.



Testimony on HB 1287
Presented to the Judiciary Committee
Prepared by Bernie Dardis, West Fargo Commission President
Wednesday, Jan. 27, 2021

1 Chairman Klemin and members of the Judiciary Standing Committee: I would
2 like to take this opportunity to submit my support for HB 1287, relating to overdose
3 prevention and immunity; and to provide a penalty.

4 When the Good Samaritan law passed in North Dakota, it was a major step in
5 helping to end overdose deaths in our state. However, we continue to see drugs
6 trafficked into North Dakota and leading to overdoses. From 2019 to 2020, the amount
7 of meth, heroin, marijuana, and fentanyl seized by the Cass County Drug Task Force
8 increased more than 350%. This bill provides a deterrent that will work toward limiting
9 the supply of drugs in our communities. As we know, one of the best strategies for
10 preventing overdoses is limiting the supply of the overdose drugs.

11 This bill also correctly removes immunity from individuals selling the drugs in an
12 overdose situation. We cannot continue to fight against overdoses without the option
13 to prosecute those who bring them into the situation for financial gain. We must put a
14 stop to individuals making money off tragic situations and receiving immunity through a
15 loophole.

16 Furthermore, I am confident in supporting this bill because West Fargo Police
17 Chief Denis Otterness, who is a former Drug Enforcement Administration Task Force
18 Officer, supports it. He has the experience to understand laws that will effectively
19 reduce the availability of drugs in a community and his support on this effort is
20 significant. HB 1287 provides the necessary steps forward to reduce the terrible impact
21 of drugs in our community by reducing the supply of drugs and maintaining protection
22 for those seeking help or providing help in good faith.

23 For these reasons, I support HB 1287.

January 26, 2021

House Judiciary Public Hearing

Chairman Klemin and members of the House Judiciary Committee,

My name is Mark Schaefer and I am the Vice President for Community Medical Services, Northern Territory. Our clinics in Minot and Fargo, are two of the three programs, statewide, that provide Medication Assisted Treatment (MAT) as an Opioid Treatment Program (OTP), using Methadone. I am here to testify in opposition to House Bill 1287, amending the conditions regarding overdose prevention.

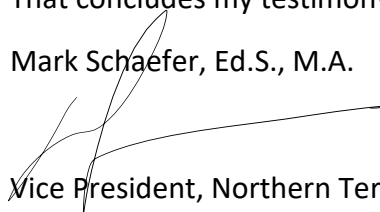
Specifically, the language that indicates “shares or otherwise provides a controlled substance to an individual”. While it is understood that the distribution and selling of illegal substances, ultimately leading to an overdose is the object of concern, the use of the above terms (shares or otherwise provides) renders the law ineffective for its intended purpose, saving lives.

The pursuit of those individuals providing substances through this amendment would leave individuals at risk and I would advocate that the benefit of a life saved outweighs the potential punishment for sharing illicit substances.

I believe there are situations where an overdose occurs, and subsequent death, and we look for someone to take responsibility for that. However, the unintended consequence of this bill would be to put more people at risk, more lives lost, and more families that lose their loved ones unnecessarily. I would urge the committee to consider amending the bill to ensure that our citizens, children, friends, and family members have every opportunity to save and be saved from the tragic repercussions of an overdose.

That concludes my testimony. Thank you for your consideration.

Mark Schaefer, Ed.S., M.A.



Vice President, Northern Territory
Community Medical Services
Minot, ND 58701 (701) 858-1801
mark.schaefer@cmsgiveshope.com

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

HB 1287

2/3/2021

Relating to overdose prevention and immunity; and to provide a penalty.

Chairman Klemin called the meeting to order at 3:28PM.

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

Discussion Topics:

- Overdose immunity protection
- Language in Section 1 of the bill
- Legal or illegal prescriptions

Rep. Becker: Motion for a Do Not Pass. Seconded by **Rep. Christensen**.

Roll call vote:

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

Motion Carried for a Do Not Pass. 10-4-0.

Rep. Magrum: Carrier.

Chairman Klemin closed the hearing at 3:48.

DeLores D. Shimek

Committee Clerk by Donna Whetham

REPORT OF STANDING COMMITTEE

HB 1287: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO NOT PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1287 was placed on the Eleventh order on the calendar.

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

HB 1287

2/8/2021

Relating to overdose prevention and immunity; and to provide a penalty.

Chairman Klemin called the hearing to order at 3:21 PM.

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

Discussion Topics:

- Reconsideration of decision
- Good Samaritan Law

Rep Koppelman's amendments LC 21.0786.01001 and LC 21.0786.01002. #3810

Rep Jones moved to reconsider, Rep Satrom seconded.

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

Motion carried. 8 – 6 – 0

Rep Jones moved to adopt the amendment LC 21.0786.01002 as is, Rep Satrom seconded. Motion was withdrawn.

Rep Jones moved to adopt the amendment LC 21.0786.01002 Sec 1, Rep Satrom seconded. Voice vote. Motion carried.

Rep Hanson moved to remove Section 2 from the amendment, seconded by Rep Paulson. Voice vote. Motion carried.

Rep Becker moved a Do Not Pass as Amended LC 21.0786.01003, seconded by Rep Paur.

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

Motion failed. 6 – 8 – 0

Rep Jones moved a Do Pass as Amended LC 21.0786.01003, seconded by Rep Christensen.

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

Motion carried. 8 – 6 – 0 Rep T Jones is carrier.

3:43 PM hearing closed.

DeLores D. Shimek, Committee Clerk

97
2/8/21

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1287

Page 1, line 3, remove "; to amend and reenact section 19-03.1-23.4 of the North Dakota"

Page 1, line 4, remove "Century Code, relating to overdose prevention and immunity;"

Page 1, line 8, replace "shares, or otherwise provides" with "delivers, or conspires to deliver"

Page 1, line 9, remove "a"

Page 1, line 10, replace "drug overdose" with "the use of that controlled substance and the death of the individual would not have occurred in the absence of the defendant's conduct. This subdivision does not apply to an individual who is immune from prosecution under section 19-03.1-23.4"

Page 1, remove lines 11 through 24

Page 2, remove lines 1 through 6

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1287: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1287 was placed on the Sixth order on the calendar.

Page 1, line 3, remove "; to amend and reenact section 19-03.1-23.4 of the North Dakota"

Page 1, line 4, remove "Century Code, relating to overdose prevention and immunity;"

Page 1, line 8, replace "shares, or otherwise provides" with "delivers, or conspires to deliver"

Page 1, line 9, remove "a"

Page 1, line 10, replace "drug overdose" with "the use of that controlled substance and the death of the individual would not have occurred in the absence of the defendant's conduct. This subdivision does not apply to an individual who is immune from prosecution under section 19-03.1-23.4"

Page 1, remove lines 11 through 24

Page 2, remove lines 1 through 6

Renumber accordingly

21.0786.01001
Title.

Prepared by the Legislative Council staff for
Representative K. Koppelman
January 12, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1287

Page 1, after line 13, insert:

"1."

Page 2, line 1, remove the overstrike over "~~or for the sharing of controlled substances among these~~"

Page 2, line 2, remove the overstrike over "present"

Page 2, after line 6, insert:

"2. As used in this section, "sharing" does not include selling, distributing, dispensing, delivering, or forcing an individual to ingest, inject, inhale, or otherwise introduce into the body, a controlled substance."

Renumber accordingly

Introduced by

Representatives K. Koppelman, Jones, Klemin, Satrom

1 A BILL for an Act to create and enact subdivision d to subsection 1 of section 19-03.1-23.1 of
 2 the North Dakota Century Code, relating to an enhanced penalty for the death of an individual
 3 as a result of a drug overdose; to amend and reenact section 19-03.1-23.4 of the North Dakota
 4 Century Code, relating to overdose prevention and immunity; and to provide a penalty.

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

6 **SECTION 1.** Subdivision d of subsection 1 of section 19-03.1-23.1 of the North Dakota
 7 Century Code is created and enacted as follows:

8 d. The defendant sells, distributes, ~~shares, or otherwise provides~~ delivers, or
 9 conspires to deliver a controlled substance to an individual which results in the
 10 death of the individual due to ~~a drug overdose~~ the use of that controlled
 11 substance and the death of the individual would not have occurred in the
 12 absence of the defendant's conduct. This subdivision does not apply to an
 13 individual who is immune from prosecution under section 19-03.1-23.4.

14 **SECTION 2. AMENDMENT.** Section 19-03.1-23.4 of the North Dakota Century Code is
 15 amended and reenacted as follows:

16 **19-03.1-23.4. Overdose prevention and immunity.**

17 1. An ~~Except as otherwise provided in subdivision d of subsection 1 of section~~
 18 19-03.1-23.1, an individual is immune from criminal prosecution under sections
 19 19-03.1-22.1, 19-03.1-22.3, 19-03.1-22.5, subsection 7 of section 19-03.1-23,
 20 subsection 3 of section 19-03.2-03, and section 19-03.4-03 if in good faith that
 21 individual seeks medical assistance for another individual in need of emergency
 22 medical assistance due to a drug overdose.
 23 2. To receive immunity under this section, the individual receiving immunity must have
 24 remained on the scene until assistance arrived, cooperated with the medical treatment

1 of the reported drug overdosed individual, and the overdosed individual must have
2 been in a condition a layperson would reasonably believe to be a drug overdose
3 requiring immediate medical assistance. Neither the individual who experiences a
4 drug-related overdose and is in need of emergency medical assistance nor the
5 cooperating individual seeking medical assistance may be charged or prosecuted for
6 the criminal offenses listed in this section or for the sharing of controlled substances
7 among those present.

8 3. In determining whether a situation constitutes sharing under this section, a court may
9 consider factors including whether multiple individuals:

10 a. Pooled their money to purchase the controlled substance;

11 b. Used the controlled substance with the individual who overdosed; or

12 c. Were present when the overdose occurred.

13 4. An individual who delivered or possessed with intent to deliver a controlled substance
14 solely for pecuniary gain is not eligible for immunity under this section.

15 5. Immunity from prosecution under this section does not apply unless the evidence for
16 the charge or prosecution was obtained as a result of the drug-related overdose and
17 the need for emergency medical assistance. Good faith does not include seeking
18 medical assistance during the course of the execution of an arrest warrant or search
19 warrant or during a lawful search.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1287

Page 1, line 8, replace "shares, or otherwise provides" with "delivers, or conspires to deliver"

Page 1, line 9, remove "a"

Page 1, line 10, replace "drug overdose" with "the use of that controlled substance and the death of the individual would not have occurred in the absence of the defendant's conduct. This subdivision does not apply to an individual who is immune from prosecution under section 19-03.1-23.4"

Page 1, after line 13 insert:

"1."

Page 1, line 14, remove the overstrike over "An"

Page 1, line 14, remove "Except as otherwise provided in subdivision d of subsection 1 of section 19-03.1-23.1, an"

Page 1, line 18, after the period insert:

"2."

Page 2, line 1, remove the overstrike over "~~or for the sharing of controlled substances among these~~"

Page 2, line 2, remove the overstrike over "~~present~~"

Page 2, after line 2 insert:

"3. In determining whether a situation constitutes sharing under this section, a court may consider factors including whether multiple individuals:

a. Pooled their money to purchase the controlled substance;

b. Used the controlled substance with the individual who overdosed; or

c. Were present when the overdose occurred.

4. An individual who delivered or possessed with intent to deliver a controlled substance solely for pecuniary gain is not eligible for immunity under this section.

"5."

Renumber accordingly

2021 SENATE JUDICIARY

HB 1287

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

HB 1287
3/10/2021

Relating to an enhanced penalty for the death of an individual as a result of a drug overdose; and to provide a penalty

Hearing called to order, all senators are present: **Myrdal, Luick, Dwyer, Bakke, Heitkamp, Fors, and Larson.** [10:00]

Discussion Topics:

- Fatal overdoses & Drug trafficking
- Elevated offense requirements in statute

Representative Kim Koppelman, [10:07] testified in favor

Denis Otterness, [10:13] Chief of Police, W Fargo Police Dept., testified in favor #8404

Dave Draovitch, [10:20] Chief of Police, Bismarck ND, testified in favor, provided Oral testimony

David Zibolski, [10:23] Chief of Police, City of Fargo Police Dept., testified in favor #8362

Stephanie Dassinger [10:30] Chiefs of Police, testified in favor

Blair Thoreson [10:31] ND Peace Officers Association, testified in favor

Travis Finck, [10:31] Executive Director, ND Commission on Legal Counsel for Indigents, gave Neutral testimony, #8438

Aaron Burst [10:44] Association of counties, gave neutral testimony

Hearing adjourned [10:49]

Jamal Omar, Committee Clerk



West Fargo Police Department

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Denis E. Otterness
Chief of Police

House Bill 1287

Good morning members of the Senate Judiciary Committee. I want to thank you for the opportunity to be here today. My name is Denis Otterness and I am the Chief of Police for the City of West Fargo. I have been a sworn law enforcement officer for the past 30 years and have served in my current role since September of last year.

I am appearing before you and offering my testimony today in full support of House Bill 1287. During my 30 year law enforcement career I have spent a great deal of time addressing, responding to, and witnessing first-hand the damage and destruction that controlled substances have on our communities and families.

By way of background, I think it's important you know that prior to coming to West Fargo I spent a majority of my 30 year law enforcement career working for the City of Bloomington, Minnesota, a suburb of Minneapolis, Minnesota. During this time I worked 10 ½ years in my department's Special Investigation Unit, in an undercover capacity, primarily investigating drug and human trafficking cases. For nearly eight of those years I was assigned to the Drug Enforcement Administration as a Task Force Officer investigating, disrupting and dismantling large scale drug trafficking organizations. Following my assignment at the Drug Enforcement Administration I spent nearly six years testifying as an expert witness in United States District Court, in the District of Minnesota, in Federal drug and firearms trafficking trials.

I was involved in conducting drug trafficking investigations on a local, regional and national level as the nationwide opioid epidemic took hold on our communities and drug trafficking cartels began to flood our communities with Methamphetamine that was nearing 100 percent purity. The surge in opioid related use, mainly heroin at that time, and methamphetamine use was astonishing. It is important to know as well that Minneapolis, a source location for drug traffickers in the Fargo/Moorhead/West Fargo region, was well known to have some of the most potent and pure heroin in the entire United States.

Over the course of the last several years a new and more deadly trend has emerged in drug trafficking, the sale of synthetic opioids such as Fentanyl and Carfentanil, along with its use as a cutting/mixing agent in other controlled substances, particularly heroin. This trend, along with the spiking increase in heroin use has led to an explosion in overdoses and overdose-related deaths in our communities.

The City of West Fargo has experienced a tremendous amount of growth over the last 15 - 20 years. I want to provide you just a snapshot of how reported overdoses have impacted the City of West Fargo

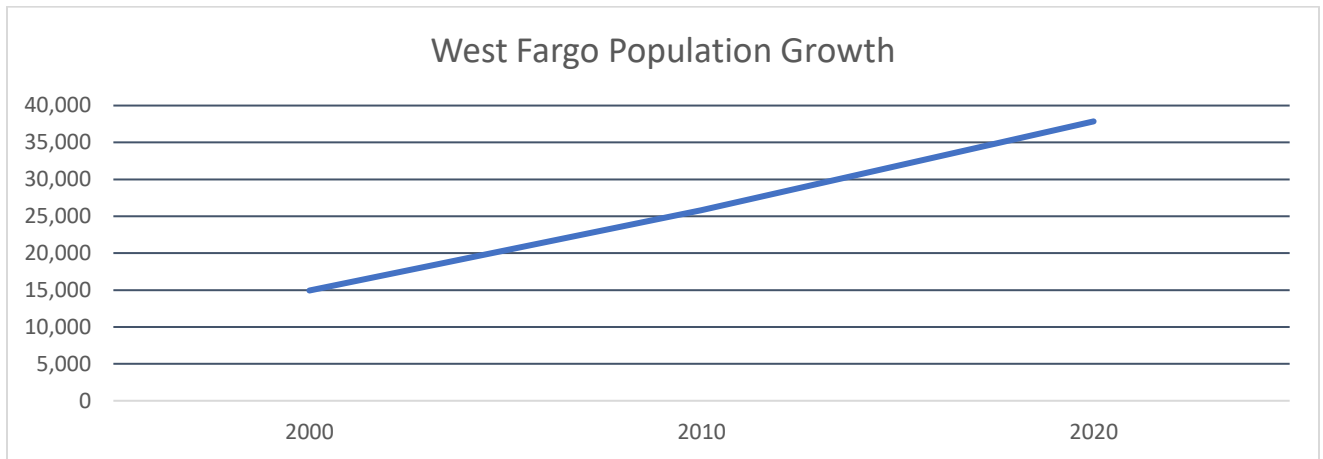


West Fargo Police Department

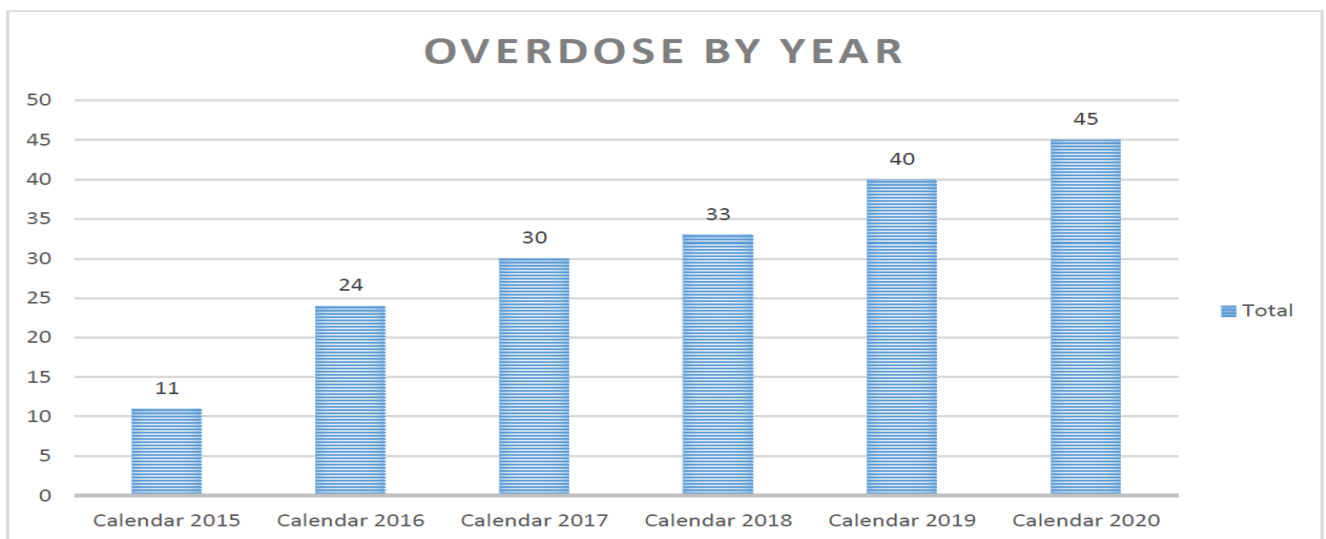
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Denis E. Otterness
Chief of Police

over the past five years. Below you will find two graphs, one that outlines our community's growth and the other that details the number of narcotics related overdoses that my officers have responded to since 2015.



Source: Wikipedia



Source: West Fargo Police Department



West Fargo Police Department

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Denis E. Otterness
Chief of Police

Many law enforcement leaders, particularly those in communities that have made Narcan widely available, understand we are receiving and reporting overdose statistics that are the tip of the iceberg. With the prevalence of Narcan it is widely known that many more overdoses are occurring in our communities than are being reported to law enforcement. Narcan is also only effective in addressing opioid-related overdoses.

I am a very strong proponent of treatment option for low-level offenders and those struggling with addictions, in addition to being a strong proponent of North Dakota's Good Samaritan language. I am also, however, steadfast in my belief that there needs to be a tool in place to hold drug traffickers accountable, particularly those that are responsible for distributing narcotics that are causing the death of so many members of our communities. As it stands right now, there is no means to prosecute those responsible for causing the overdose death of someone by trafficking in controlled substances. In other words, you can sell someone controlled substances and sell someone controlled substances that causes an overdose death and the penalties are the same.

I want to thank you again for the opportunity to be here today and will answer any questions you might have. Thanks again!

Denis Otterness
Chief of Police



CITY OF FARGO POLICE DEPARTMENT

Chief David B. Zibolski



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March 9, 2021

Senator Holmberg, Chair
North Dakota Senate Judiciary Committee
Bismarck, ND

RE: HB 1287

Dear Chairman Holmberg and members of the Committee,

My name is David Zibolski and I am the newly appointed Chief of Police in Fargo. I am a 36-year law enforcement professional, having worked in various ranks within the Milwaukee Police Department, Deputy Administrator with the Wisconsin Department of Justice, and served as chief in two departments—Beloit, WI and now Fargo.

I testify before you today in strong support of HB 1287. In the City of Fargo, our overdoses have increased dramatically from 36 in 2019 to 91 in 2020 and have been on an upward trend since 2018. Most disconcerting is the rapid increase in fatal overdoses, from 11 in 2019 to 18 in 2020. When I testified before the House Judiciary Committee regarding this bill on January 26, 2021, we had experienced nine (9) overdoses with two (2) fatalities. As of March 6, 2021, the City of Fargo has experienced 24 overdoses with three (3) fatalities. Toxicology data from the fatal cases show a variety of poly-drug mixtures involving Fentanyl, Methamphetamine, and other drugs.

I have learned from our narcotics investigators that in some of the fatal overdose cases they have identified the same person or persons involved in the delivery of narcotics that caused a fatal overdose in our community. These individuals are not the addict-to-addict dealers, but in fact are insidious criminals who deliver a variety of narcotic mixtures, regardless of its fatal potency or components, for the sole purpose of criminal enterprise. They have evolved their criminality to the point where they now conceal fatal doses of Fentanyl into pills—M-30's—that appear to be prescription Oxycodone. The Fargo Police Department has recovered a large amount of these pills during search warrants related to overdose investigations. They are not using and then calling EMS after a fatal overdose, they are delivering dangerous narcotics to further their criminal gains and simply walking away.

ADMINISTRATION
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INVESTIGATIONS
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RECORDS
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NON EMERGENCY
Phone: 701-235-4493

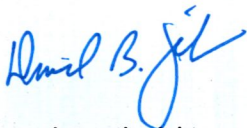
Unfortunately, this crime does not have a penalty enhancer, so a trafficker faces no additional penalty for causing a fatal overdose than they do for merely delivering a narcotic to a user. This is a critical gap in criminal accountability, as well as an oversight in safeguarding legitimate victims of these treacherous crimes.

Currently, law enforcement in North Dakota has no ability to hold these individuals responsible in a meaningful way. Federal cases offer an enhanced penalty, but are few and far between and in most cases venue cannot be established for such a case. Just as in other crimes (armed robbery, burglary, etc.) in which the victim is killed as a result, trafficking narcotics that cause a fatal overdose should expose the offender to an enhanced Class A Felony.

This bill does not diminish in any way the previously legislated immunity provisions provided for in section 19-03.1-23.4 (NDCC), but it does provide a much needed penalty enhancer for hard-core criminals who are killing our community members and adversely affecting our families. The final decision in terms of prosecution will rest with State Attorney's, which will ensure appropriate application of the enhanced penalty without compromising Good Samaritan safeguards. On January 25, 2021, the Fargo City Commission endorsed this bill under these premises.

Thank you for the opportunity to testify before you today. I am happy to answer any questions you may have.

Sincerely,



David B. Zibolski
Chief of Police
City of Fargo
dzibolski@fargond.gov
701-241-1401

Engrossed House Bill 1287
Senate Judiciary Committee
March 10, 2021
Neutral Testimony of Travis W. Finck
Executive Director, NDCLCI

Madam Chair, members of the Senate Judiciary Committee, my name is Travis Finck and I am the executive director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense services in North Dakota. On behalf of the Commission on Legal Counsel, I rise today to provide neutral testimony on Engrossed House Bill 1287.

The Commission expressed concerns when discussing this bill after the passage through the House. The first issue of concern was the proximate cause, or lack of proximate cause, this section seems to require. A trademark of a criminal statute is a proximate cause between the action of the accused and the harm or wrong suffered. Whilst HB 1287 seeks to address the harm of providing drugs to an individual who then overdoses, it is written in such a way where a proximate cause is not required for the increased penalty to apply. The death of the individual is tied to the use of the controlled substance. However, it is not required to be an overdose death. Hypothetically, this could be used when an individual shares their drugs at a gathering, the person who consumes the drugs cuts themselves while using, walks to the hospital and is run over by a truck and is killed. Who would be responsible for the death, the truck driver or the person who delivered the drugs at the gathering? This example, while seemingly far-fetched, illustrates the potential danger the way the statute is written.

An additional concern with the lack of proximate cause would be in the instance of multiple people delivering controlled substances at a party. Give the legislation, as currently written, lacks a proximate cause requirement, is it the intent of the legislation that each person who provided drugs at the party would be subjected to the enhanced penalties? Furthermore, there could be an extremely difficult proof issue. Would this result in more conspiracy charges? How would a prosecutor be able to show to a jury the agreement necessary for a conviction?

Lastly, this bill, as written, may have unintended consequences. The way the statute is written, it could allow for creative defense attorneys to raise this statute as a defense in a

homicide case if the victim is under the influence of a narcotic. In the hypothetical above, the truck driver could raise a defense that he is not responsible for the death, but the person who provided the substances at the gathering was responsible for the death.

The Commission brings this neutral testimony to raise these concerns and I would stand for any questions.

Respectfully Submitted:

A handwritten signature in dark ink, appearing to read 'Travis W. Finck', with a large, sweeping loop at the end.

Travis W. Finck

Executive Director, NDCLCI

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1287
3/22/2021

A BILL for an Act to create and enact subdivision d to subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code, relating to an enhanced penalty for the death of an individual as a result of a drug overdose; and to provide a penalty.

Hearing called to order all Senators Present: **Myrdal, Luick, Dwyer, Bakke, Fors, Heitkamp, Larson. [10:06]**

Discussion Topics:

- Elevated penalties in law
- Statutory provisions related to drug trafficking

Senator Luick Moved a DO PASS
[10:12]

Senator Bakke Seconded the Motion
Vote Passed 7-0-0

Senator Bakke Carried the Bill

DO PASS Vote On HB 1287	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Hearing Adjourned [10:14]

Jamal Omar, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1287, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1287 was placed on the Fourteenth order on the calendar.