

**2021 HOUSE JUDICIARY**

**HB 1223**

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Judiciary

Room JW327B, State Capitol

HB 1223

1/25/2021

Relating to the penalty for an individual under twenty-one years of age who consumes, purchases, or possesses an alcoholic beverage; and to provide a penalty.

**Chairman Klemin** called the hearing to order at 8:30 AM.

Representatives	Attendance
Representative Lawrence R. Klemin	P
Representative Karen Karls	P
Representative Rick Becker	P
Representative Ruth Buffalo	A
Representative Cole Christensen	P
Representative Claire Cory	P
Representative Karla Rose Hanson	P
Representative Terry B. Jones	P
Representative Jeffery J. Magrum	P
Representative Bob Paulson	P
Representative Gary Paur	P
Representative Shannon Roers Jones	P
Representative Bernie Satrom	P
Representative Steve Vetter	P

### Discussion Topics:

- Alcohol usage and support for minor users
- Effect and fairness of ND Criminal statutes

**Rep. Ista:** Introduced the bill. Testimony #2252 8:31

**James Knopik, Dept. of Human Services:** Testimony # 2593 8:37

**Additional Written Testimony: Don Hager, Judge, NE Central Judicial District: #2217**

**Rep. Roers Jones:** Do Pass Motion Made **Rep. Vetter:** Seconded. 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	Y
Rep Vetter	Y
Rep Buffalo	A
Rep K. Hanson	Y

Motion carried 12-1-1

**Rep. Roers Jones:** floor assignment.

**Chairman Klemin:** Closed 8:42

DeLores D. Shimek by Donna Whetham  
Committee Clerk

**REPORT OF STANDING COMMITTEE**

**HB 1223: Judiciary Committee (Rep. Klemin, Chairman)** recommends **DO PASS** (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1223 was placed on the Eleventh order on the calendar.



# NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



## Representative Zachary Ista

District 43  
3850 15th Avenue South  
Grand Forks, ND 58201-3727

C: 701-361-6671  
zmista@nd.gov

## COMMITTEES:

Finance and Taxation  
Energy and Natural Resources

January 25, 2021

Chairman Klemin and Members of the Judiciary Committee:

I write in **support** of HB 1223, which would change the offense level for minor in consumption or possession of alcohol (MIC/P) from a class B misdemeanor to an infraction. I urge the Committee to recommend a **DO PASS** on this bill.

I put forward this proposal at the joint request of the five judges of the Northeast Central Judicial District. The judges—who are on the frontlines of administering justice in North Dakota—requested this change to align in state law the treatment of unlawful alcohol consumption/possession with unlawful marijuana consumption/possession in low volumes. I agree with the judges that such a change is appropriate and fair given North Dakota’s recent change in marijuana criminalization laws, and I refer the Committee to the testimony of Judge Donald Hager, presiding judge of the Northeast Central Judicial District, discussing his support of the bill.

But some have asked, “What message does this bill send about underage drinking in the state?” And that’s a fair question. We all know underage drinking, and binge drinking in particular, are problems among North Dakota’s youth and young adults. Does this bill say we don’t take those problems seriously? No. The message this bill sends is that underage drinking, binge drinking, and substance abuse are problems best addressed by parents, educators, and mental health professionals—not primarily by courts and certainly not by incarceration.

Before I move to what HB 1223 does, let me spend some time on what it does *not* do. First, it has no impact on driving under the influence (DUI) laws. Anyone, no matter their age, who gets behind the wheel while drunk still faces the serious penalties already in place under North Dakota law. This bill makes no changes to those appropriately severe consequences. Second, this bill has no material impact on minors—those under age 18—who consume or possess alcohol. Such offenses are already dealt with in the juvenile justice system. There, MIC/P is already an “unruly child” offense, meaning the law presently treats the conduct as a less severe offense than a “delinquent act” (*i.e.* the juvenile equivalent of an adult crime).

This bill instead impacts young adults ages 18, 19, and 20 who choose to possess or consume alcohol in violation of the law. More specifically, HB 1223 would amend NDCC § 5-01-08(3) to punish underage use or possession (among various other less common violations of law) be punished as an infraction rather than as a class B misdemeanor. As a class B misdemeanor currently, MIC/P is punishable by a maximum penalty of 30 days in jail, a \$1,500 fine, or both. *See* NDCC 12.1-32-01(6). If changed to an infraction, the maximum penalty for MIC/P would be a fine of \$1,000; no jail time is permitted as a sentence for an infraction. *Id.* § 12.1-32-01(7). It is important to note here that an infraction is still a criminal offense under North Dakota law. If cited for an infraction, offenders still have to appear in court and answer for their conduct before a judge. Moreover, even if HB 1223 were enacted, a serial MIC/P offender still could face more serious punishment in appropriate circumstances, as the law permits sentencing an offender who has committed the same infraction at least twice

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before in the same year as if he had committed a class B misdemeanor. *Id.* Thus, even if the offense were to become an infraction, serial offenders still could face jail time and heftier fines if they repeatedly violate the MIC/P law.

Why, though, is this change necessary? I believe there are several reasons.

*First*, even the mere threat of possible incarceration is an inappropriate way to deal with the problem of underage drinking. We have made strides in the state and nationally in recognizing that treatment and education, not jail time, are the best way to deal with substance abuse problems. So while using jail time under current law is rarely, if ever, done, we should remove that threat in recognition that there are better ways of addressing the problems associated with underage drinking.

*Second*, an infraction still carries penalties that I believe are enough to deter MIC/P. In truth, most MIC/P violators already are sentenced only to criminal fines. Many jurisdictions, including Grand Forks, routinely defer imposition of sentence on MIC/P, which requires offenders to pay fines/fees and then have the charge dismissed and sealed after a year if they do not reoffend. Thus, our courts generally already recognize the appropriate punishment befitting this offense is a monetary penalty and not incarceration.

*Third*, I do not believe a young adult should be saddled with a misdemeanor criminal record for underage drinking. As the Committee knows well, a host of collateral consequences can flow from having a misdemeanor criminal record, with such impact being particularly fraught for young adults who may be looking to start careers that require professional or occupational licenses. Changing the offense level to an infraction better balances the need to hold offenders accountable for their conduct while being cognizant of the long-term consequences caused by interaction with the criminal justice system.

*Fourth*, HB 1223 fairly aligns treatment in North Dakota law of two substances commonly used (unlawfully) by young adults: alcohol and marijuana. Under current law, MIC/P of alcohol is subject to harsher punishment than the possession of small amounts of marijuana. While MIC/P of alcohol is a class B misdemeanor, possession of marijuana in an amount less than one-half ounce is classified only as an infraction. *See* NDCC § 19-03.1-23(7)(d)(1). This arguably creates an unintended incentive structure pushing those young adults under 21 years of age to use marijuana rather than alcohol given the less severe consequences attached to marijuana. It likewise creates an unfair structure wherein a 20-year-old could face jail time for underage drinking, but another 20-year-old would only be subject to a criminal fine for marijuana use. Thus, aligning the penalties for alcohol and marijuana use makes sense as a matter of policy and as a matter of fairness.

*Fifth*, and finally, changing the maximum penalty for MIC/P may increase judicial efficiency and safeguard state and local financial resources. Persons charged with an MIC/P infraction might be less inclined to retain counsel or contest the charges in court if the maximum punishment is merely a fine, thereby expediting judicial proceedings. If an MIC/P defendant opts to contest the charge, he or she would not be entitled to court-appointed counsel at public expense. *See* NDCC § 12.1-32-03.1(1). Even if they chose to “fight the charge” or to retain private counsel, there is no right to a jury trial for an infraction-level offense, further providing another avenue of judicial efficiency. *See id.*

In summary, HB 1223 promotes fairness, efficiency, and a recognition that harsh criminal penalties are not the best way to deal with substance abuse. For these reasons, Mr. Chairman and members of the Committee, I urge you to support HB 1223 with a **DO PASS** recommendation. I stand ready to answer any questions.

**Testimony**  
**House Bill 1223 - Department of Human Services**  
**House Judiciary Committee**  
**Representative Klemin, Chairman**

January 25, 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 support of House Bill 1223.

Alcohol is still the most used substance among North Dakota youth. 22.5 percent of North Dakota middle school students report having used alcohol at some point in their life and 27.6 percent of North Dakota high school students report current alcohol use (within the past 30 days of the survey) according to the 2019 Youth Risk Behavior Survey.

Since 2014 there has been a multi-branch effort to address gaps in the state's behavioral health system. The three key focuses are to support a full continuum of services (prevention to recovery), increase access to community-based services, and to reduce criminal justice involvement for those with behavioral health needs. Criminalizing behavioral health conditions can lead to unnecessary growth in the criminal justice system and harm to the individual and family.

Research supports the use of evidence-based education classes when individuals have experienced an alcohol related offense. These evidence-based educational classes can be provided for youth who experience an alcohol related offense creating a supportive and preventative response, rather than a punitive one. In turn, decreasing the need for more costly interventions later in life.

In summary the Department of Human Services' Behavioral Health Division supports House Bill 1223. This concludes my testimony, and I am happy to answer any questions.



## HOUSE BILL No. 1124

January 25, 2021

Good morning, Chairman Klemin and members of the House Judiciary Committee.

My name is Don Hager. I am the presiding judge for the Northeast Central Judicial District, chambered in Grand Forks.

Thank you for the opportunity to address House Bill No. 1223.

As a district judge, I and all trial judges are in a unique position, to view daily, the overall effect and fairness of our evolving criminal statutes. North Dakota passed criminal justice reform in the last session that lessened the possession of less than a half-ounce of marijuana to an infraction. North Dakota Century Code, Section 12.1-32-01(7) penalizes that as a fine up to \$1,000, and no incarceration. If a person has a third offense in a one-year period, the prosecution can charge the third one as B misdemeanor, which carries a penalty of up to 30 days incarceration and a fine up to \$1,500. Now, House Bill No. 1201 is asking for even greater leniency to change possession of less than an ounce to a \$50 fine, no infraction, and to make possession of an ounce and less than 250 grams an infraction. Another bill is for legalization of marijuana.

By comparison, a minor person in possession or consumption of alcohol is subject to a B misdemeanor penalty under North Dakota Century Code, Section 5-01-08(3). In addition, Subsection 3 was supplemented to include mandatory participation in an evidence-based alcohol and drug education program. House Bill No. 1124 asks to make participation discretionary with the trial judge. There is no such program requirement for marijuana possession or consumption.

House Bill No. 1223 is a request to this legislature to consider bringing more fairness to our young citizens, comparable to the current marijuana law, notwithstanding approval of even greater leniency for this federally controlled substance. The conviction of a minor in possession charge carries lifetime consequences for occupational reasons. I advise defendants it may affect licensure in certain occupations, and for a class of individuals who are becoming, or will soon become, the core of our society. For students, it can mean attending a course of study for three years and incurring great financial indebtedness, only to find out they cannot qualify for that occupation.

Many people like me served, or are serving, in our armed forces as a teenager. It seems grossly unfair to place such heavy trust and responsibility on them while in service to this country, and at the same time, brand them as criminals for possession or consumption of a substance which unlike marijuana, is not federally controlled. House Bill No. 1223 is reducing the charge from a B Misdemeanor to an infraction, which is still considered a criminal offense in North Dakota, but is not in other jurisdictions nor by many in the employment sector. I would further urge you to consider the same \$50 fine and characterization as marijuana if you pass House Bill No. 1201.

Thank you for your time, and your service to the State of North Dakota.

**2021 SENATE JUDICIARY**

**HB 1223**

# 2021 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Peace Garden Room, State Capitol

HB 1223, AM  
3/10/2021

Relating to the penalty for an individual under twenty-one years of age who consumes, purchases, or possesses an alcoholic beverage; 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:**

- Aligning unlawful alcohol consumption/possession with unlawful marijuana consumption/possession
- Reducing criminal justice involvement with behavioral health

**Representative Zachary Isla**, [9:48] testified in favor, #7898

**James Knopik** [10:02], Behavioral Health Administrator, DHS-Behavioral Health Division, testified in favor, #8393

Hearing adjourned [10:06]

*Jamal Omar, Committee Clerk*



# NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



## Representative Zachary Ista

District 43  
3850 15th Avenue South  
Grand Forks, ND 58201-3727  
C: 701-361-6671  
zmista@nd.gov

## COMMITTEES:

Finance and Taxation  
Energy and Natural Resources

March 10, 2021

Chairwoman Larson and Members of the Senate Judiciary Committee:

I write in **support** of HB 1223, which would change the offense level for minor in consumption or possession of alcohol (MIC/P) from a class B misdemeanor to an infraction. In the House, HB 1223 earned a 12-1-1 “do pass” recommendation from the Judiciary and passed on the floor by a vote of 81-11. For the reasons set forth below, I urge this Committee to recommend a **DO PASS** on HB 1223.

I put forward this proposal at the joint request of the five judges of the Northeast Central Judicial District. The judges—who are on the frontlines of administering justice in North Dakota—requested this change to align in state law the treatment of unlawful alcohol consumption/possession with unlawful marijuana consumption/possession in low volumes. I agree with the judges that such a change is appropriate and fair given North Dakota’s recent change in marijuana criminalization laws, and I refer the Committee to the testimony of Judge Donald Hager, presiding judge of the Northeast Central Judicial District, discussing his support of the bill. The persuasiveness of the judges’ views has only increased following the House’s recent passage of bills to both permit recreational adult use of marijuana and decriminalize the possession of small amounts of marijuana.

But some have asked, “What message does this bill send about underage drinking in the state?” And that’s a fair question. We all know underage drinking, and binge drinking in particular, are problems among North Dakota’s youth and young adults. Does this bill say we don’t take those problems seriously? No. The message this bill sends is that underage drinking, binge drinking, and substance abuse are problems best addressed by parents, educators, and mental health professionals, not primarily by courts and certainly not by incarceration. Indeed, when heard in the House Judiciary Committee, HB 1223 had the support of the Department of Human Services’ Behavioral Health Division, which highlighted that reducing criminal justice involvement for those with behavioral health needs is a key focus for the Department.

Before I move to what HB 1223 does, let me spend some time on what it does *not* do. First, it has no impact on driving under the influence (DUI) laws. Anyone, no matter their age, who gets behind the wheel while drunk still faces the serious penalties already in place under North Dakota law. This bill makes no changes to those appropriately severe consequences. Second, this bill has no material impact on juveniles—those under age 18—who consume or possess alcohol. Such offenses are already dealt with in the juvenile justice system. There, MIC/P is present an “unruly child” offense, meaning the law already treats the conduct as a less severe offense than a “delinquent act” (*i.e.* the juvenile equivalent of an adult crime).

This bill instead impacts only young adults ages 18, 19, and 20 who choose to possess or consume alcohol in violation of the law. More specifically, HB 1223 does just one thing: it amends NDCC § 5-01-08(3) to punish underage use or possession (among various other less common violations of law) as a criminal infraction rather than as a class B misdemeanor. As a class B misdemeanor currently, MIC/P is punishable by a maximum penalty

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 March 10, 2021

of 30 days in jail, a \$1,500 fine, or both. *See* NDCC 12.1-32-01(6). If changed to an infraction, the maximum penalty for MIC/P would be a fine of \$1,000; no jail time is permitted as a sentence for an infraction. *Id.* § 12.1-32-01(7). It is important to note here that an infraction is still a criminal offense under North Dakota law. If cited for an infraction, offenders still must appear in court and answer for their conduct before a judge. Moreover, even if HB 1223 were enacted, a serial MIC/P offender still could face more serious punishment in appropriate circumstances, as the law permits sentencing an offender who has committed the same infraction at least twice before in the same year as if he had committed a class B misdemeanor. *Id.* Thus, even if the offense were to become an infraction, serial offenders still could face jail time and heftier fines for repeated violations.

Why, though, is this change necessary? I believe there are several reasons.

*First*, even the mere threat of possible incarceration is an inappropriate way to deal with the problem of underage drinking. We have made strides in the state and nationally in recognizing that treatment and education, not jail time, are the best way to deal with substance abuse problems. So while using jail time under current law is rarely, if ever, done, we should remove that threat in recognition that there are better ways of addressing the problems associated with underage drinking.

*Second*, an infraction still carries penalties that I believe are enough to deter MIC/P. In truth, most MIC/P violators already are sentenced only to criminal fines. Many jurisdictions, including Grand Forks, routinely defer imposition of sentence on MIC/P, which requires offenders to pay fines/fees and then have the charge dismissed and sealed after a year if they do not reoffend. Thus, our courts generally already recognize the appropriate punishment befitting this offense is a monetary penalty and not incarceration.

*Third*, I do not believe a young adult should be saddled with a misdemeanor criminal record for underage drinking. As the Committee knows well, a host of collateral consequences can flow from having a misdemeanor criminal record, with such impact being particularly fraught for young adults who may be looking to start careers that require professional or occupational licenses. Changing the offense level to an infraction better balances the need to hold offenders accountable for their conduct while being cognizant of the long-term consequences caused by interaction with the criminal justice system.

*Fourth*, HB 1223 fairly aligns treatment in North Dakota law of two substances commonly used (unlawfully) by young adults: alcohol and marijuana. Under current law, MIC/P of alcohol is subject to harsher punishment than the possession of small amounts of marijuana. While MIC/P of alcohol is a class B misdemeanor, possession of marijuana in an amount less than one-half ounce is classified only as an infraction. *See* NDCC § 19-03.1-23(7)(d)(1). This arguably creates an unintended incentive structure pushing those young adults under 21 years of age to use marijuana rather than alcohol given the less severe consequences attached to marijuana. It likewise creates an unfair structure wherein a 20-year-old could face jail time for underage drinking, but another 20-year-old would only be subject to a criminal fine for marijuana use. This misalignment would only increase if the House bills legalizing adult use of marijuana for recreational purpose and/or decriminalizing possession of small amounts of marijuana were to be enacted. Thus, aligning the penalties for alcohol and marijuana use as set forth in HB 1223 makes sense as a matter of policy and as a matter of fairness.

*Fifth*, and finally, changing the maximum penalty for MIC/P may increase judicial efficiency and safeguard state and local financial resources. Persons charged with an MIC/P infraction might be less inclined to retain counsel or contest the charges in court if the maximum punishment is merely a fine, thereby expediting judicial proceedings. If an MIC/P defendant opts to contest the charge, he or she would not be entitled to court-appointed counsel at public expense. *See* NDCC § 12.1-32-03.1(1). Even if they chose to “fight the charge” or

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to retain private counsel, there is no right to a jury trial for an infraction-level offense, further providing another avenue of judicial efficiency. *See id.*

In summary, HB 1223 promotes fairness, efficiency, and a recognition that harsh criminal penalties are not the best way to deal with substance abuse. For these reasons, Madam Chairwoman and members of the Committee, I urge you to support HB 1223 with a **DO PASS** recommendation. I stand ready to answer any questions.

**Testimony**  
**House Bill 1223 - Department of Human Services**  
**Senate Judiciary Committee**  
**Senator Larson, Chairman**

March 10, 2021

Chairman Larson and members of the Senate 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 support of House Bill 1223.

Since 2014 there has been a multi-branch effort to address gaps in the state's behavioral health system. One of these focuses has been to reduce criminal justice involvement for those with behavioral health needs. Criminalizing behavioral health conditions can lead to unnecessary growth in the criminal justice system and harm to the individual and their family.

Alcohol is still the most used substance among North Dakota youth. 22.5 percent of North Dakota middle school students report having used alcohol at some point in their life and 27.6 percent of North Dakota high school students report current alcohol use (within the past 30 days of the survey) according to the 2019 Youth Risk Behavior Survey.

Research supports the use of alcohol education classes when individuals have experienced an alcohol related offense. These educational classes can be provided for youth who experience an alcohol related offense creating a supportive and preventative response, rather than a punitive one. In turn, decreasing the need for more costly interventions later in life.

In summary the Department of Human Services' Behavioral Health Division supports House Bill 1223. This concludes my testimony, and I am happy to answer any questions.

# 2021 SENATE STANDING COMMITTEE MINUTES

## Judiciary Committee Peace Garden Room, State Capitol

HB 1223, PM  
3/10/2021

Relating to the penalty for an individual under twenty-one years of age who consumes, purchases, or possesses an alcoholic beverage; and to provide a penalty.

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

### Discussion Topics:

- Consistency in drug regulation
- Behavioral Health in North Dakota statute

Senator Myrdal [3:45] moved to DO PASS on HB 1223  
Senator Bakke [3:45] seconded the motion

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

Roll Call Vote 4-3-0

HB 1223 passes [3:50]

Hearing adjourned [3:52]

*Jamal Omar, Committee Clerk*



**REPORT OF STANDING COMMITTEE**

**HB 1223: Judiciary Committee (Sen. Larson, Chairman)** recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1223 was placed on the Fourteenth order on the calendar.