

2021 SENATE JUDICIARY

SB 2273

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

SB 2273
1/27/2021

A BILL for an Act to amend and reenact section 19-03.1-22.1 of the North Dakota Century Code, relating to the inhalation of vapors; and to provide a penalty.

Chairwoman Larson Calls committee work to order [9:56]
Senators Heitkamp, Fors, Myrdal, Luick, Dwyer, Bakke and Larson were present.

Discussion Topics:

- Vaping
- Probation
- Chemical dependency evaluations
- Drug education program

Senator Jim Roers [9:02] introduces bill in favor #3787.

Robert Vallie [9:05] Assistant States Attorney, Cass County State's Attorney Office testified in favor #3689.

Chairwoman Larson closed the hearing [9:35]

Senator Luick [9:35] moved to DO PASS
Senator Heitkamp seconded the motion

Roll Call Vote

Motion passes 7-0-0

Senator Larson will carry

Senators	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

Additional written testimony: N/A

Chairwoman Larson adjourned committee [9:47]

Jamal Omar, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2273: Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2273 was placed on the Eleventh order on the calendar.

Committee Testimony

SB 2263 - Huffing

Jim Roers

Thank you Chairwoman Larson,

I am here to introduce my bill on huffing, or inhaling vapors. For the record, I am Senator Jim Roers.

This change would provide a more strict penalty for multiple huffing charges within one year. Most importantly, if an individual has three charges within a year, the sentence must include a chemical addiction evaluation and hopefully treatment. It's clear that someone who is facing multiple charges has a problem, and it makes sense to get them treatment sooner rather than just see them get fines time after time.

This idea comes from the office of the Stark County States Attorney, and they will be presenting more detail shortly.

Thank you for your time. I'm now open for questions.

**Robert Vallie-Assistant State's Attorney
Cass County State's Attorney's Office
Testimony Concerning Senate Bill 2273
January 27, 2021**

Madam Chair and members of the Senate Judiciary Committee,

My name is Robert Vallie and I am an Assistant State's Attorney with the Cass County State's Attorney's Office and a licensed attorney in the State of North Dakota. I stand in support of the passage of Senate Bill 2273, a bill to elevate the crime of Inhalation of Vapors to a Class A Misdemeanor for a third or subsequent offense within a one year period and a mandatory minimum requirement of a chemical dependency evaluation.

First and foremost, I want to thank Senator Jim Roers and the sponsors of this bill for helping to bring this important issue before the North Dakota Legislature. As a prosecutor having seen the impacts and limitations of our current law, I am appreciative to those willing to sponsor this legislation. This proposal provides additional resources and options to our court system to rehabilitate those involved in this offense.

Inhalation of Vapors is North Dakota's criminal offense relating to the more commonly known action of huffing. This involves an individual inhaling a volatile chemical or chemicals to achieve a high. Our current statute lists twenty-seven chemicals that would qualify to this offense. These volatile chemicals can be found in items any one of us could acquire at the local hardware, auto repair, or grocery store. These chemicals can be found in common products such as antifreeze, cleaning supplies, cosmetics, printing inks and surface coatings. Inhalation of Vapors is a Class B Misdemeanor. A Class B Misdemeanor provides maximum possible penalties such as thirty days in jail and a fifth teen hundred dollar fine. A Class B Misdemeanor does not allow for supervised probation.

For the last three years, I have had the privilege of working as an Assistant State's Attorney with Ward County and now with Cass County. I have also prosecuted individuals of this offense and have interacted with other prosecutors who have prosecuted defendants for this offense. In my experience, the number of individuals prosecuted for this crime is small, compared to other crimes, like Driving Under the Influence. However, while the numbers of individuals prosecuted may be small, the number of offenses committed is anything but that. In my experience, there have been those who have plead guilty or have been convicted of this crime dozens of times over, in a matter of months or a year timeframe. Unlike some of our criminal statutes, such as Driving Under the Influence, where repeat offenders face an increased offense level and mandatory minimums, Inhalation of Vapors does not. Whether a first-time offender or an offender with dozens of convictions, the law does not provide for options for supervised probation, or a chemical dependency evaluation. Under the current statute, being able to properly deal with the underlying addiction issues relies on the defendant being able to overcome that hurdle alone, or to be convicted of a more serious offense to open the door to additional resources. Given the Legislature's continued efforts towards rehabilitation and addressing underlying substance abuse issues, this change is a necessary one.

While the amount of defendant's impacted by such a modification may be small, it will have a positive one for those impacted. This legislation allows the opportunity to catch those with substance abuse issues early on or within a shorter timeframe. By doing so, it allows for the protection of valuable court resources and taxpayer dollars. It also allows an opportunity to provide additional resources, like supervised probation, to repeat offenders.

Madam Chair and members of the Committee, thank you for the opportunity to provide testimony to this important issue. I urge a Do Pass Recommendation and happy to address any questions you may have as you deliberate this matter.

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2021 HOUSE JUDICIARY

SB 2273

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

SB 2273

3/22/2021

Relating to the inhalation of vapors; and to provide a penalty.

Chairman Klemin called the hearing at 10:00 AM.

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

Discussion Topics:

- Multiple convictions in a year
- Evaluation of impact on people
- Volatile chemical

Senator J. Roers: Introduced the bill.

Robert Vallie, Cass County Ass't States Attorney: Testimony #10198 10:03

Chairman Klemin closed the hearing at 10:39.

DeLores D. Shimek
Committee Clerk

**Robert Vallie-Assistant State's Attorney
Cass County State's Attorney's Office
Testimony Concerning Senate Bill 2273
March 22, 2021**

Chairman Klemin and members of the House Judiciary Committee,

My name is Robert Vallie and serve as an Assistant State's Attorney with the Cass County State's Attorney's Office and a licensed attorney in the State of North Dakota. I stand in support of the passage of Senate Bill 2273. This bill would elevate the crime of Inhalation of Vapors to a Class A Misdemeanor for a third or subsequent offense within a one-year period and a mandatory minimum requirement of a chemical dependency evaluation.

First and foremost, I want to thank Senator Jim Roers and the co-sponsors of this bill for helping to bring this important issue before the North Dakota Legislature. As a prosecutor, having seen the impacts and limitations of our current law, I am appreciative to those willing to sponsor this legislation. This proposal provides additional resources and options to our court system to rehabilitate those involved in this offense.

Inhalation of Vapors is North Dakota's criminal offense to what is more commonly known as huffing. This involves an individual inhaling a volatile chemical or chemicals to achieve a high. Our current statute lists twenty-seven (27) chemicals that would qualify to this offense. These volatile chemicals can be found in items any one of us could acquire at the local hardware, auto repair, or grocery store. These chemicals can be found in common products such as antifreeze, cleaning supplies, cosmetics, printing inks and surface coatings. Since being enacted in 2001, the crime of Inhalation of Vapors is a Class B Misdemeanor. A Class B Misdemeanor provides maximum possible penalty of thirty (30) days in jail and a fifth teen hundred dollar (\$1,500) fine. A Class B Misdemeanor does not allow for supervised probation.

For the last three years, I have had the privilege of working as an Assistant State's Attorney with both Ward County and Cass County. I have prosecuted individuals for this offense and have interacted with other prosecutors who have prosecuted defendants for this offense. In my experience and observations, the number of individuals prosecuted for this crime is small, compared to other crimes, like Driving Under the Influence, or Possession of a Controlled Substance. However, while the number of individuals prosecuted may be small, the number of offenses committed by that individual is anything but that. In my experience, there have been those who have plead guilty or have been convicted of this crime dozens of times over a matter of a year timeframe, if not in a few months. Unlike some of our criminal statutes, such as Driving Under the Influence, where repeat offenders face an increased offense level and with-it increased penalties and mandatory minimums, Inhalation of Vapors does not. Whether a defendant is a first-time offender or an offender with dozens of convictions, the law does not provide for options for supervised probation, where a probation officer may be able to assist a probationer with resources, like in patient treatment. The law does not provide for a requirement of a chemical dependency evaluation, as we see in our DUI statute. Under the current statute, being able to properly deal with the underlying addiction issues relies on the defendant being able to overcome that hurdle alone or have a support network in place to assist in dealing with addiction. In order to be on supervised probation a defendant would need to be convicted of a more serious offense where supervised probation can be ordered and by extension the resources offered to deal with the probationer's addiction issues can be accessed. Given the Legislature's continued efforts towards rehabilitation and addressing underlying substance abuse issues, this

change is a necessary and appropriate one.

While the amount of defendant's impacted by such a modification may be small, it will have a positive one for those impacted. This legislation allows the opportunity to catch those with substance abuse issues early on or within a shorter timeframe. By doing so, it allows for the protection of valuable court resources and taxpayer dollars, by addressing those who become repeat offenders under this statute in the future. It also allows an opportunity to provide additional resources and support, like supervised probation, to repeat offenders to better address the addiction issues they face and a means of support.

Mister Chairman and members of the Committee, thank you for the opportunity to provide testimony to this important issue. I urge a Do Pass Recommendation and happy to address any questions you may have as you deliberate this matter.

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2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

SB 2273
3/22/2021
PM

Relating to the inhalation of vapors; and to provide a penalty.

Chairman Klemin called the hearing at 2:40. PM.

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

Discussion Topics:

- Probation
- Addiction evaluation
- Amendment

Rep. Paur: Motion to adopt the amendment 21.0964.02001.

Rep. T. Jones: Seconded

Voice vote carried.

Rep. Roers Jones: Do Pass as Amended

Rep. Satrom: Seconded

Roll call vote:

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

Motion carried. 8-4-2 Carrier: Rep. Roers Jones

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Stopped 3:03

DeLores D. Shimek
Committee Clerk

March 22, 2021

DA 3/22/21
1011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2273

Page 1, line 15, after "by" insert ", and compliance with recommendations from,"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2273: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 4 NAYS, 2 ABSENT AND NOT VOTING). SB 2273 was placed on the Sixth order on the calendar.

Page 1, line 15, after "by" insert ", and compliance with recommendations from."

Renumber accordingly