

2011 HOUSE JUDICIARY

HB 1260

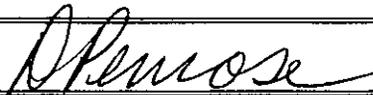
2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1260
January 24, 2011
13289

Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1260.

Rep. Dwight Wrangham: Sponsor, support (read the attached testimony 1 from Chuck Bosch).

Rep. Beadle: I know the background to this incident and that the genesis of the bill isn't from you but from a constituent. You stated in Mr. Bosch's testimony, virtually everyone was surprised when they found out that this was legal to do this; also that the state's attorney office dropped all charges against my son. Minors who are under the age of 18, are not legally allowed to enter into a contract. So is the AG's office dropping the charges an indication that these forms are already not legal.

Rep. Wrangham: In visiting with Mr. Bosch, he informed me that when he contacted a private attorney, the private attorney said that his case was substantially weakened because his son had signed the documents. Whether it would have stood up in court or not, I don't know.

Chairman DeKrey: Thank you. Further testimony in support of HB 1260.

Sen. Robert Erbele: Sponsor, support. I am here to briefly rise in support of this bill. Mr. Bosch is originally from our district and I've known him for a number of years, so when this issue came forward I was the first person that he contacted. I encouraged him to work with his own representative in his district, so that they would be aware of it and he would get to know them as well. But I was happy to sign onto the bill and being he's not here today, I figured that I would just stand here again on his behalf to share my support of his position and the position outlined in the bill. One thing that he didn't say in his testimony that he shared with me, that I think is important, where he indicates that in November, 2010, where the case was dropped. Then he got his \$276 back, but he didn't say that it cost him \$1,000 in attorney's fees to get the \$276 back. The last part of the bill I think is really important; let's wait, if the guilt is there, then charge him the \$276 in fees. I also feel that there should be a neutral party in the room, not just the store personnel only when minors are involved.

Rep. Delmore: Do you know if a store retailer routinely does this when the person is a minor, just put a piece of paper in front of them and say you sign this now.

Sen. Robert Erbele: I don't know that. Mr. Bosch was very specific and you notice in the testimony that he did not say who the retailer was and he does not to implicate them in any way. I wouldn't have any knowledge of that.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition to HB 1260. We will close the hearing. What are the committee's wishes in regard to HB 1260.

Rep. Delmore: Isn't there some kind of protection for a minor if somebody sits you down and says sign this, other than that they are probably terrified, if you took it to court, that without a parent present, how could a retailer do this.

Rep. Klemin: Looking at the specific issue here, relating to civil remedies, there is no Miranda type warning that you give, because law enforcement has to give it. There isn't any warning that I'm aware of that the party who was robbed has to warn the person in advance that you might be giving up some right to deny this later if you sign a confession now. It's an admission. Admissions are treated as evidence in court and so, if a minor admits doing something, that can be used as evidence against the minor. The problem with this situation that we've got here, is it's not used as evidence against the minor, it is used as evidence against the parent or legal guardian who is the party that's being held accountable for what their kid did. I think there is probably a good reason for having this kind of amendment to that, you know if you do bring the juvenile in, and we're not talking about how old this minor is, they might have been 8, 9, or 14. It could have been any age, and sit them down and have them confess to something and then use that against their parent later. When you're in a criminal situation, I think a parent's got a right to be involved in some confession that their child is going to make. Here on the civil side, there isn't anything. We don't know what kind of duress that the merchant might be using in the office in the back room or not. The example we heard was that the kid confessed to doing something he apparently didn't do, at least if we believe the parent.

Rep. Maragos: Is it just the signature of the minor that gives that document standing if it wasn't evidence created in a legal fashion. I don't quite understand how that document had any standing whatsoever in a court of law, other than simply the minor signing it.

Rep. Klemin: Well it's an admission. An admission is going to be given certain weight as evidenced by the finder of fact in court. If the finder of fact believes that the admission was coerced, they can choose not to believe it. We're talking about a civil action here, not a criminal case here. The judge or jury is a little more flexible, if they don't believe that the admission was true, just because the kid signed

something doesn't mean that they have to accept it. It is evidence, that's all it is. It might be pretty good evidence, but it's just evidence.

Rep. Koppelman: I move a Do Pass on HB 1260.

Rep. Maragos: Second.

14 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Rep. Steiner

Date: 4/24/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1260

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Koppelman Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Steiner

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

REPORT OF STANDING COMMITTEE

HB 1260: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1260 was placed on the
Eleventh order on the calendar.

2011 SENATE JUDICIARY

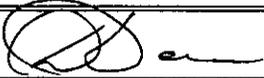
HB 1260

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1260
4/21/11
Job #15782

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to civil liability for retail theft

Minutes:

There is written testimony

Senator Nething – Chairman

Representative D. Wragham – District 8 – Introduces and explains the bill. He says presently if a minor is charged with shoplifting they can be taken into a room and questioned by the owners or employees of the store and has to sign admission guilt. He says he may not be guilty but signs the paper just to get out of there. The merchant at this point can charge them up to \$250. for a civil suit and the expenses of shop lifting plus attorney expenses. He says the problem comes when the person is innocent. He explains it is very hard for an attorney to overturn when they have signed the paper confessing to shoplifting. He says this bill states that the individual cannot be forced to sign such an affidavit if there is not a parent or guardian or attorney present.

Senator Olafson – Asks if the Miranda Rights kick in at this situation.

Chuck Bosch – See written testimony.

Senator Lyson – Asks when law enforcement was called in on his son's case.

Bosch – Explains when his son was taken into a room the police were called and he was asked to sign a document.

Senator Olafson – Said he doesn't see anything in this bill that allows someone to make them sign a piece of paper.

Bosch – Said it is his understanding that minors are always treated differently but his attorneys told him that applies to public folks like policeman and private folks can do whatever they want. He was very surprised by this.

Opposition

Mike Rud – President of the ND petroleum Marketers and ND Retail Association – See written testimony.

Senator Nething – Asks him about section 3.

Rud – Says he has no problem with section 3 but section 2 is difficult. He relates an example of his son's friends. He says shop lifting is an ongoing problem and something needs to be done.

Senator Nething – Says as he reads the bill the merchant he can't request the signature. He doesn't see that as a major impediment.

Senator Nelson – Said she doesn't understand why they need to sign a form.

Rud – Says they are trying to send a message.

Senator Sorvaag – States it is worth \$250 to the merchant to get them to sign before they leave.

Senator Olafson – Thinks retailers are setting themselves up to a legal challenge.

Neutral

Andy Zachmeier – Fraternal Order of Police – Says they have no stand on this but he will answer any procedural questions

Senator Sitte – Asks what happens to the kids.

Zachmeier – Explains the procedure and most of the time the stores do not call the Police Dept. until all the stores paperwork is signed. He said 99% of the time all papers are already signed. He said there is a \$250 civil penalty plus the cost of the goods. He thinks if the child is found guilty the store should be allowed to pursue that civil penalty. The Police cannot ask the child any questions at the store because a parent or attorney is not present. They take the child to the Police Dept. and that is where the Miranda Rights are read and someone comes to pick the child up.

Senator Lyson – Asks if we aren't allowing them to take away the Miranda Rights because they are an individual asking them.

Zachmeier – Says he has no position on that because the store is still an independent citizen and courts have held that independent citizens are exclusive of the Miranda Rights.

Senator Olafson – Agrees if they are found guilty the store has a right to pursue civil action but if they sign the form it has an impact on criminal prosecution. He asks if the two should be separated. It shouldn't be up to the store to determine guilt.

Zachmeier – Said he has seen people refuse to sign and thinks it would be sufficient for the juveniles to receive notification from the store of their intent to pursue civil liability.

Close the hearing on HB1260

Committee work

The committee discusses the possibility of having two forms, one for adult and one for juveniles. Senator Sitte believes the state should not get involved in the forms and the stores should work that out for themselves. Senator Nething agrees he does not want to put prescribed forms in a bill.

Senator Lyson moves a do pass
Senator Sitte seconded

Roll call vote – 6 yes, 0 no
Motion passes

Senator Lyson will carry

REPORT OF STANDING COMMITTEE

HB 1260: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1260 was placed on the
Fourteenth order on the calendar.

2011 TESTIMONY

HB 1260

Mr. Chairman, Members of the Judicial Committee

My name is Chuck Bosch, I apologize for not appearing before you today in person but a work commitment required me to travel to Fargo over the next few days.

Before you today is HB 1260. This bill is an amendment to a law commonly known as The Civil Anti-Shoplifting Bill. House bill 1260 amends two aspects of Section 51-21-05, first it would prohibit a merchant from requesting a minor to sign a declaration of guilt without a parent, guardian or attorney being present, and secondly it would delay any civil action by the merchant until all criminal action is completed.

Let me first state that House Bill 1260 is not an attempt to provide loopholes for individuals that commit theft, rather it is an effort to integrate fairness into existing legislation and to ensure that young people are treated in a manner that is appropriate for their age. I, my wife and our son Jared strongly believe that stealing is wrong and those individuals that commit an offense should be held responsible for their acts.

As important as it is to have legislation in place where individuals that commit crimes are held accountable, I feel that it is also equally important, if not more important to ensure that individuals, in this case minors are treated fairly and are not taken advantage of or preyed upon. Because of their young age and lack of experience to make sound judgments, minors are treated differently in many aspects of life. Because young people are very easily persuaded and intimidated they can be coerced into doing things that they would not do had they completely understood the circumstances.

If you are wondering why I am so interested in House Bill 1260 becoming law, the following is a brief description of events that occurred to my son a couple years ago when he was charged with aiding in a theft when one of his friends attempted to shoplift a baseball cap.

In June of 2009 my son was shopping when his friend decided to steal a baseball cap. During the period when the other boy tore off the price tag my son was at the check out paying for his cap. Unknown to Jared what the other boy's intentions were, they left the store together and were immediately stopped by the merchant and taken to an upstairs room by the store security.

Please understand that this is not a discussion on a shoplifting attempt, but more on how young people can be put into a position where they cannot win. During the shoplifting incident my son was told not asked, to sign a form admitting to his guilt, and also by signing the form he acknowledged he was being sued by the merchant. Although the form states that it was fully explained, my son indicated to me the form was never explained to him and that he had no idea that he was signing something that admitted guilt. I'm guessing the majority of youth when taken to a back room of some store by strange adults are so fearful that they would sign anything that is shoved in front of them. Even in a case where a merchant explained to the youth what he is signing, which was not the case with my son, I'm guessing their young heads are spinning so fast that they

are not hearing anything that is being told to them. Further more, based on conversations with the attorney we ended up hiring to represent Jared, because Jared had signed the form admitting to his guilt he had greatly weakened his position to defend himself in a court of law.

Also, within the document that my son signed admitting guilt, he was informed and acknowledged that he understood that the merchant was pursuing civil action under the "The Civil Anti Shoplifting Law" and that he was to remit a payment of \$26.00 for the value of the merchandise, the cap the other kid tried to steal and \$250.00 in exemplary damages within 90 days or the merchant would refer the case to their law firm. Out of fear that if we didn't pay the amount requested that the merchant would place a lien or something against our home and with the possibility of incurring additional attorney's fees, we chose to pay the \$276.00.

I truly believe that there are very few 18 year olds, let alone 15 year olds that have enough understanding of civil law suits to make an educated decision on whether or not to sign such a form. Additionally, as stated earlier the merchant required payment within 90 days. Unfortunately, the juvenile court system cannot be completed within the 90 day period as specified by the merchant. So in other words, my son was guilty without going through the judicial process.

To reassure you that this is not a case of sour grapes, after reviewing the case the following November, six months after the date of the incident, the States Attorney's office dropped all charges against my son. I can tell you this was a huge relief to me and wife, and particularly to our son who has plans of entering the military after graduation and wanted a spotless record.

Virtually everyone I have told this story to was as surprised as we were when we found out that it was legal to have a young person sign such a document. I feel this bill is needed to protect our children because young people are unable to make good sound judgment for themselves.

Mr. Chairman, members of the Judicial Committee, I ask a do pass motion on HB 1260 for the following reasons:

1. The whole premise behind the juvenile court system is that minors are different than adults and need to be treated differently. This basic principle should carry over into the private world as well. We don't allow minors to purchase houses or cars without their parent's support, why would we expect them to understand the consequences of signing documents about civil actions and admissions of guilt.
2. Because of their inexperience, minors are not able to understand the real world ramification of signing documents.
3. Because minors generally respect their elders, when placed in uncomfortable situations, minors will do whatever it takes to get them out of the situation even if it means signing something that they don't really understand.

4. Minors are easily manipulated by adults and thus can be taken advantage of and need the support of an advocate such as a parent, guardian or attorney.
5. Passing HB 1260 would allow the natural progression of the judicial system to occur without interference of an admission of guilt or civil action.
6. Passing this bill would place all minors in fair and equal position when entering the juvenile system.
7. It is my understanding that officers of the court are required to inform criminal suspects, prior to questioning, of their constitutional rights by reading them the "Miranda Rights". This is done so they are informed that they have the right to decline making any self incriminatory statements, and the right to legal ~~counsel~~. *counsel.* Although not directly comparable it seems this bill would provide minors with similar protection.
8. And simply, our society standards say we just don't treat our kids this way.

Again, I wish I could have presented my testimony in person but the circumstances did not allow it. I would be happy to respond to any questions you may have or to provide you with any of the documentation I discussed. Representative Wrangham and Delzer and Senator Erbele have my contact information if you wish to speak to me.

Thank you for this opportunity,

Sincerely,
Chuck Bosch

1260
①

Mr. Chairman, Members of the Judicial Committee

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conversations with the attorney we ended up hiring to represent Jared, because Jared had signed the form admitting to his guilt he had greatly weakened his position to defend himself in a court of law.

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Virtually everyone I have told this story to was as surprised as we were to find out it is legal to have a young person sign such a document. I feel this bill is needed to protect our children because young people are unable to make good sound judgment for themselves.

Mr. Chairman, members of the Judicial Committee, I ask a do pass motion on HB 1260 for the following reasons:

1. The whole premise behind the juvenile court system is that minors are different than adults and need to be treated differently. This basic principle should carry over into the private world as well. We don't allow minors to purchase houses or cars without their parent's support, why would we expect them to understand the consequences of signing documents about civil actions and admissions of guilt.
2. Because of their inexperience, minors are not able to understand the real world ramification of signing documents.
3. Because minors generally respect their elders, when placed in uncomfortable situations, minors will do whatever it takes to get them out of the situation even if it means signing something that they don't really understand.

4. Minors are easily manipulated by adults and thus can be taken advantage of and need the support of an advocate such as a parent, guardian or attorney.
5. Passing HB 1260 would allow the natural progression of the judicial system to occur without interference of an admission of guilt or civil action. It should not cost a parent nearly a \$1,000.00 like it did us, to prove you child's innocence and to get your civil suit money back.
6. Passing this bill would place all minors in fair and equal position when entering the juvenile system. Let the evidence, such as security surveillance tapes and eye witness accounts determine the guilt of someone, not a form that an inexperienced, frightened, intimidated and possibly coerced young person signed.
7. It is my understanding that officers of the court are required to inform criminal suspects, prior to questioning, of their constitutional rights by reading them the "Miranda Rights". This is done so they are informed that they have the right to decline making any self incriminatory statements, and the right to legal council. Although not directly comparable it seems this bill would provide minors with similar protection.
8. And simply, our society standards say we just don't treat our kids this way.

Thank you for allowing me to present my testimony. I would be happy to respond to any questions you may have or to provide you with any of the documentation I discussed.

Again, thank you for this opportunity,



ND Petroleum Marketers Association
ND Retail Association



Testimony HB 1260

March 21, 2011- Senate Judiciary

Chairman Nething and members of the Committee:

For the record, my name is Mike Rud. I'm the President of the North Dakota Petroleum Marketers and North Dakota Retail Association. With all due respect to Representative Wrangham and his constituent's family, I'm here today urging a **"DO NOT PASS" on HB 1260.**

Did you ever get caught stealing? I can remember my one and only time. We still lived in New Salem and my mom worked at the bank. Every afternoon, we would go down to see her and she would give us a penny to get a piece of candy at the drugstore. Well, one day I thought I needed more than one candy, so I stuffed a few extra in my pocket and put my one piece on the counter with my penny. As we were walking home, the baby sitter saw me opening up another piece of candy, well needless to say I was in trouble at that point.

She took me back down to the bank, my mom took me over to the drugstore where I proceeded to admit my guilt, say I was sorry and gave the owner a nickel. I have never even thought of stealing another item again in my life.

I share this story, because it's a far cry from what's happening today in the world. I have one member who told me in November, his retail outlet caught 19 people attempting to shoplift items from the store he manages. If the shoplifter is a minor, the store policy is to contact this person's parents or guardian. In all but one of these cases, no parent or guardian showed up to take the minor home. The shoplifter ended up getting a ride to



ND Petroleum Marketers Association
ND Retail Association



juvenile hall in a squad car.

Organized Retail Crime is a multi- billion dollar business in this country. In many cases shoplifters due have accomplices, either store personnel or their friends. Retailers spend thousands of dollars each year on security equipment and personnel trying to stop theft of property. I don't know of any retailer who uses intimidating tactics to coerce innocent bystanders into admitting guilt when it comes to shoplifting.

We trust our kids to drive our cars to the mall and spend the money we give them wisely.

In other words we believe they are old enough and mature enough to make the right decisions. So can't most young North Dakotans read a form and make an

honest and informed response in a shoplifting incident? Can't they say I'm

not guilty of anything and I'm not signing this document admitting wrong doing even if their friends were? I think most of them can when asked.

Again, We urge a "DO NOT PASS" on HB 1260.