

**2013 SENATE JUDICIARY**

**SB 2251**

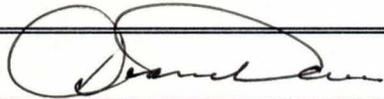
# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

SB2251  
1/30/2013  
Job #17973

Conference Committee

Committee Clerk Signature



Minutes:

*Attached testimony*

**Relating to the penalties for crimes for which a monetary amount triggers the level of penalty**

**Senator David Hogue - Chairman**

**Senator Armstrong** - District 36 - Introduces the bill and gives a hand-out. (1) He speaks of being a victim of a crime and no matter the level of the crime it is serious to you. This bill adds a higher grade to a higher level of theft. He said there is also a double A felony theft but in his opinion that would occur in such minor incidence that it is not what the major changes in the bill are. The primary change is raising the felony level theft from \$500 to \$1000. He explains that it hasn't been changed since 1981 and gives examples of states around us with higher rates. He said many people in the industry have worked on this bill and he recommends a do pass.

**Senator Sitte** - Says she concerned about Section 3. Asks if it has ever been used.

**Senator Armstrong** - Replies that if we ever had a catastrophe of that magnitude it would be major.

**Senator Lyson** - Relates an example of how this catastrophe would work.

**Senator Armstrong** - Replies intent is a prerequisite of the charge.

**Paul Myerchin** - ND Association of Criminal Defense Lawyers - See written testimony (2)

**Senator Sitte** - Questions double A felonies and has made it her mission this session to be very careful. She gives a scenario.

**Myerchin** - He responds in that scenario it falls more in line with some type of negligent homicide. He says it would have to be a tragic accident to be over the \$500,000 level.

**Allan Assen** - ND Association of Justice - He says a point raised during the interim is that the criminals do not price shop. He goes on to say inflation has turned what was a misdemeanor into a felony.

**Aaron Birst** - Association of Counties - In support - He said this bill has been the works for 6 years. There was the perception we were sending the signal that we were getting less on crime. He said there was not an effort to derail it.

**Barney Tomanek** - Dept. of Corrections - In support and says it is time for the change.

Opposition - none

Neutral

**Jim Ganje** - Office of the State Court Administrator - Proposes an amendment for Judge Doug Madsen dealing with adjusting upward the sanction that could be imposed in a contempt proceeding. (3)

Close the hearing 2251

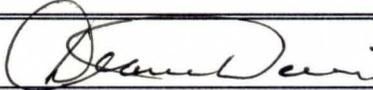
# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

SB2251  
2/4/2013  
Job #18245

Conference Committee

Committee Clerk Signature



**Minutes:**

Vote

**Senator David Hogue - Chairman**

Committee work

Committee discusses the proposed amendment and what the amendment would do.

Senator Grabinger motions to adopt the amendment  
Senator Lyson seconded

Discussion

Senator Armstrong hopes his bill has a chance to go through but worries there may be resistance because of the amendment. Senator Hogue said a 4-fold increase in the amendment is significant and may spark opposition. Committee discusses the amendment.

Vote - 0 yes, 7 no  
Amendment fails

Senator Sitte motions for a do pass on the bill  
Senator Grabinger seconded

Vote - 7 yes, 0 no

Senator Armstrong will carry

Date: 2-4-13  
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2251**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number ganje amendment - (3)

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

Motion Made By S Grabinger Seconded By S Lyson

Senators	Yes	No	Senator	Yes	No
Chariman David Hogue		X	Senator Carolyn Nelson		X
Vice Chairman Margaret Sitte		X	Senator John Grabinger		X
Senator Stanley Lyson		X			
Senator Spencer Berry		X			
Senator Kelly Armstrong		X			

Total (Yes) 0 No 7

Absent 0

Floor Assignment \_\_\_\_\_

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

*Motion fails*

Date: 2-4-13  
 Roll Call Vote #: 2

**2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2251**

Senate 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 S. Sitte Seconded By S. Grabinger

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment S. Armstrong

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

**REPORT OF STANDING COMMITTEE**

**SB 2251: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS**  
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2251 was placed on the  
Eleventh order on the calendar.

**2013 HOUSE JUDICIARY**

**SB 2251**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

SB 2251  
March 25, 2013  
Job 20407

Conference Committee

Committee Clerk Signature

## Explanation or reason for introduction of bill/resolution:

Relating to the penalties for crimes for which a monetary amount triggers the level of penalty; and to provide a penalty.

## Minutes:

Testimony 1

**Chairman Kim Koppelman:** Opened hearing on SB 2251.

## Support:

0:35 **Paul Myerchin, ND Association of Criminal Defense Lawyers:** Distributed handout, attachment #1. Asking for an increase in the monetary triggers. Stated that it has been thirty years since the levels were last examined. Gave examples of typical costs of items in the mid 1970's. Stated that it is a significant tax of defense attorneys to deal with the number of felony-level offenses for thefts. These cases are a tax on the judicial system. The legislative council did a study to determine today's equivalent of the dollar amount. We are asking for a \$1000 level, which is consistent with a number of neighboring states. We are asking you to update our laws and to recognize that inflation occurs.

5:08 **Vice Chairman Larry Klemin:** This bill actually does other things than increase in the felony levels. Spoke of interim committee which viewed this bill. Spoke of study by legislative counsel several sessions ago. Drew attention to page 2, line 21, regarding AA felony. That is not anything to do with inflation.

6:21 **Paul Myerchin:** You are correct on the history, and my recollection is that in either the 2009 or 2011 session, this draft was considered. In Section 3, line 13 or 14 we are talking about a major catastrophe, a loss in excess of \$500,000, and an intentional crime.

7:45 **Vice Chairman Larry Klemin:** We are going from a Class C to a Class AA felony, which I think is a life in prison. (Myerchin confirms.) That is a major difference which has nothing to do with inflation. Drew attention to Section 5, grading of theft offenses, on lines 13-14. This again is not related to inflation but instead is creating a new category of felony for theft offenses.

9:19 **Paul Myerchin:** When our legislative committee looked at that, we would have preferred not to have that in there for some of the reasons you raised. But when we looked

at this bill as a whole, it was a consensus of our committee that the bill as a whole was good law.

**Vice Chairman Larry Klemin:** The same issue is also carried forward in Section 7 on misapplication of entrusted property and in Section 10 on forgery. Assume we accept your premise that the offenses that you talked about should be increased, the rationale being at least thirty years since those were changed. If we look at the penalties, most of the penalties for the felonies were set out in statute in 1973. The fines for those felony offenses has not changed in forty years. Don't we have the same argument there that inflation has taken its toll on the value of the fine? If we accept your premise that we ought to increase the theft offenses due to inflation, it's also affected the value of the dollars on the fines.

12:55 **Paul Myerchin:** It is appropriate and valid. I would say this falls within the discretion of the judges and the individuals they have before them. If the person has the means and the court feels that it is appropriate based on the offense, maybe for some of these offenses the fines should be higher. Many folks do not have the means in which to bear a high fine. The mandatory court fees in place for offenses really do tax them. For some folks in the criminal justice system who can afford it, certain fines would be a deterrent. For a lot of these folks, the courts will stay with what they've done, and fines will not be a major penalty or deterrent.

14:50 **Vice Chairman Larry Klemin:** Those fines set out are maximums. The maximum level has not changed for forty years.

15:06 **Paul Myerchin:** If there was a piece of legislation in this session, our legislative committee would certainly give it due consideration.

15:47 **Senator Kelly Armstrong, District 36:** Introduced the bill. Because items cost more than they used to, a theft of an item which used to be a misdemeanor would now be a felony. Spoke of adjustments his local state's attorneys and law enforcement make to account for the increased prices of items of everyday items. We also increase on the top end. The larger thefts and felonies tend to be white collar crimes, and we do not go anywhere after a B felony on a white collar crime. Elaborated. The larger thefts have significantly more impact on the people from whom the items or funds were stolen. Spoke of the increased number of these larger thefts and the impact they are having on the court system. Explained section of bill pertaining to destructive property offense. One of the reasons fines have not increased is that with theft cases, judges are good at parsing out the fine in relation to criminal restitution. Elaborated.

21:07 **Vice Chairman Larry Klemin:** There are three sections which deal with the distinction between offenses of more than \$50,000 versus offenses of less than \$50,000 and the increase to an A felony. Why are we proposing that?

21:35 **Senator Armstrong:** You are addressing the serious nature large theft.

21:52 **Chairman Kim Koppelman:** What are the offenses that qualify for an A felony?

22:05 **Senator Armstrong:** Homicide statutes. Most of them are violent crimes.

**Chairman Kim Koppelman:** So by some of the changes you're suggesting here, we are taking a public policy step from viewing property crimes as serious but less serious than violent crimes. Is it your opinion that they should be on a similar level if the dollar amount is big enough?

22:55 **Senator Armstrong:** It is my opinion that large thefts should be treated more seriously. Gave examples. The classification of crime is only one step in the process of how this works. Gave elaboration and examples pertaining to sentencing.

24:30 **Chairman Kim Koppelman:** Spoke about policy direction. Spoke of concept of rehabilitation, incarceration, and re-entry. On one hand, we have the desire to be tough on crime. On the other hand, we are looking at the type of offense, whether people were hurt. I am trying to get the big picture focus.

26:07 **Senator Armstrong:** Spoke about change brought on by technology in that records are now quite publically accessible even after the consequences have been completed. Spoke about change in the value of items and the change in fines and penalties. Spoke about high-end thefts. Spoke of felonies for non-violent offenders.

28:48 **Allan Austad, with the North Dakota Association for Justice:** We supported this bill two interims ago, and we support it today. Spoke of raising amounts which trigger felony charges.

30:05 **Jackson Loftgren, assistant Morton County States Attorney:** Spoke in support of SB 2251. Most of the valuations for theft offenses and property crimes were done in 1973. I think the bill overall fixes some things and cleans some things up. Elaborated.

30:52 **Vice Chairman Larry Klemin:** Back when these levels were imposed, the fine levels were also set. Those have not changed since then, either. Those are statutory maximums, and judges have discretion. What do you think about also increasing the maximum amount of the fines? Spoke of white collar crimes.

32:02 **Jackson Loftgren:** I agree with that. If we're going to adjust for inflation on one area, we should probably look at doing that in all areas. Elaborated on his experiences with fines.

32:54 **Chairman Kim Koppelman:** How do you feel about the other parts of this bill that ratchet up the level of seriousness for property crimes?

33:22 **Jackson Loftgren:** In regard to the release of destructive forces, enhancing that from a C felony to a AA is a good idea. To get to that catastrophe level, you've had to destroy a \$500,000 of property, which is a substantial thing. I think those people should be treated more severely.

33:54 **Chairman Kim Koppelman:** The bill also removes the distinction of intentional versus willful. I'm talking more of raising the threshold regarding property crimes, such as on the top of page 6 of the bill. Question about Class A felony.

34:33 **Jackson Loftgren:** I think that is a good change. Provided examples of typical thefts which would fall into that level.

35:14 **Vice Chairman Larry Klemin:** I would like to go back to the release of destructive forces section again, increasing the maximum to a AA felony, which is life imprisonment without parole. On the last part regarding structures in excess of \$500,000 or substantial risk of harm or death to five or more individuals. Don't we have some other crimes that cover the substantial risk of harm or death rather than putting something like this in what is really something related to dollar amount type of offenses?

36:10 **Jackson Loftgren:** We do. Reckless endangerment would cover the same sort of conduct, but it is a C felony. So I think that what this is looking at is for those terroristic incidences or when a person is trying to harm a large number of people. Gave examples.

**Vice Chairman Larry Klemin:** Aren't there also some federal crimes involved here?

36:50 **Jackson Loftgren:** Possibly some federal terrorist statutes would intermix with this. It's always nice to have something on the state level to adequately address these as well.

**Opposition:**

**Neutral:**

**Hearing closed on SB 2251.**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

SB 2074  
March 25, 2013  
Job 20430

Conference Committee

*Kristie Hetzler*

**Explanation or reason for introduction of bill/resolution:**

Relating to penalties for insurance fraud; and to provide a penalty.

**Minutes:**

**Chairman Koppelman:** Opens hearing. Assigned subcommittee to meet on bills 2074, 2251, 2345 all relating to penalties. Rep Klemin will be Chairman for that subcommittee with Rep. Branbandt and Rep. Hanson serving with him. 7:05

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

SB 2251  
April 2, 2013  
Job # No recording

Conference Committee

Committee Clerk Signature

*Marlynn Keenly*

## Explanation or reason for introduction of bill/resolution:

Subcommittee meeting for SB 2074, 2345, 2251.

## Minutes:

It came to my attention that there were a few revision and another item necessary for the minutes so consider these the revised ones:

Meeting was called to order by Rep. Klemin at 11:00 AM, Reps. Klemin, Brabandt and Hanson were present in addition to Commission Hamm and members of the Insurance Commission staff.

Rep. Klemin presented some background in bills similar to those being discussed and their history in interim studies. Rep. Klemin also presented a chart of where current Century Code has placed levels of criminal designation and penalties incurred along with current proposals for their adjustment.

It was decided that criminal designation levels Class A, B, C Felonies and Class A Misdemeanors should be made uniform within these three bills.

SB 2074: Rep. Hanson moved, seconded by Rep. Brabandt, to amend to "services retained or involved" in lines 7 & 8 of page 1. Motion passed 3-0. Rep. Hanson moved, seconded by Rep. Brabandt, to remove references to subsection 6 in anticipation of potential renumbering due to SB 2251's passage in lines 10 & 11 of page 1. Motion passed 3-0. Rep. Brabandt moved, seconded by Rep. Hanson, to add a designation of a class A Felony for theft more than \$50,000.

Rep. Hanson moved, seconded by Rep. Brabandt, to adopt bill as amended to recommend to full committee. Motion passed 3-0.

SB 2345: Motion made by Rep. Hanson moved, seconded by Rep. Brabandt, to remove the word "elderly" from bill. The motion passed 3-0 but was discovered to be too cumbersome to make work with the rest of Century Code and will therefore not be recommended to the full committee. Rep. Hanson moved, seconded by Rep. Brabandt, to change number of Class C Felony to theft of \$1000 or more. Passed 3-0. Rep. Hanson moved, seconded by Rep.

Brabandt, to create a Class A Misdemeanor designation for theft of \$1,000 or less to preserve uniformity within Century Code.

Rep. Hanson moved, seconded by Rep. Brabandt, to adopt bill as amended to recommend to full committee. Motion passed 3-0.

SB 2251: Rep. Hanson moved, seconded by Rep. Brabandt, delete section 3. The committee found exchanging a Class B Felony with a Class AA Felony designation to be extreme and questioned the need given that there was no testimony provided specifically to back it. Motion passed 3-0. Rep. Hanson moved, seconded by Rep. Brabandt, change language on page 8, lines 10 and 26 to "excess of one thousand dollars" to provide unity within Century Code. Motion passed 3-0. Rep. Brabandt moved, seconded by Rep. Hanson, to adopt entirety of Amendment 13.8230.01001, relating to fines. Motion passed 3-0

Rep. Hanson moved, seconded by Rep. Brabandt, to adopt bill as amended to recommend to full committee. Motion passed 3-0.

The following is a summary of the criminal designations as they are proposed by the subcommittee in terms of level of thefts to incur said designation and fine subsequent:

AA Felony: Eliminated

A Felony: \$50,000 or more theft level, \$20,000 maximum fine.

B Felony: \$10,000 or more theft level, \$20,000 maximum fine.

C Felony: \$1,000 or more theft level, \$5,000 maximum fine.

A Misdemeanor: Less than \$1,000 theft level, \$3,000 maximum fine.

For organizations, the theft amount will remain the same as above while the penalties will be as follows:

A Felony: \$100,000 maximum fine.

B Felony: \$70,000 maximum fine.

C Felony: \$50,000 maximum fine.

A Misdemeanor: \$30,000 maximum fine.

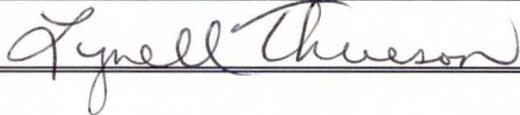
B Misdemeanor: \$20,000 maximum fine.

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

SB 2251  
April 1, 2013  
Job 20742

Conference Committee



Minutes:

**Chairman Kim Koppelman:** Opens SB 2251 for committee action.

**Vice Chairman Klemin:** Explained proposed amendments worked on by the sub-committee. The bill hasn't been changed. Our recommendation was to take out the change where we couldn't see going through life in prison without parole with nothing to back it up.

**Vice Chairman Klemin:** I move a Do Pass on the proposed amendments. Seconded by Representative Maragos.

**Chairman Koppelman:** The fines haven't increased since 1973, is that the same timeframe that the thresholds for these penalties were last time?

**7:39 Vice Chairman Klemin:** Pretty much, the thresholds might not have been 30 years but the fines were 40 years.

**Representative Steiner:** How does the fine work if they don't have the money and they are going to jail? Do they work at the prison to pay it off or does it sit there until they are released from jail?

**8:06 Vice Chairman Klemin:** As a part of the sentencing, the court would send them to jail for an amount of time depending upon what the penalty is. The court could also set a fine in the discretion of the court which may never get paid. They do earn some money in prison.

**10:03 Representative Paur:** According the Federal Reserve in 1973 we had a 526% increase in value. What was the other date?

**Vice Chairman Klemin:** 1997 for the misdemeanors.

**10:55 Chairman Koppelman:** The maximum fine for a CLASS A felony and CLASS B felony is the same. Has that always been the case?

**Vice Chairman Klemin:** Yes. That has been that way since 1973.

**A Voice Roll Call vote** on the proposed amendments to SB 2251. Motion carried.

House Judiciary Committee

SB 2251

April 1, 2013

Page 2

**Representative Delmore:** I move a **Do Pass** on amended SB 2251, seconded by Representative Brabandt.

**A Do Pass Roll Call vote: Yes = 13, No = 0, Absent = 1. Carrier:** Representative Klemin.

March 28, 2013

VK  
4/1/13  
10/3

PROPOSED AMENDMENTS TO SENATE BILL NO. 2251

Page 1, line 2, remove "12.1-21-04,"

Page 1, line 3, after the fourth comma insert "12.1-32-01, 12.1-32-01.1,"

Page 2, remove lines 18 through 30

Page 3, remove lines 1 and 2

Page 8, line 10, remove the overstrike over "one"

Page 8, line 10, remove "five"

Page 8, line 10, overstrike "hundred" and insert immediately thereafter "thousand"

Page 8, line 19, overstrike the first "a" and insert immediately thereafter ":

a. A"

Page 8, line 21, overstrike "The offense is a" and insert immediately thereafter:

"b. A"

Page 8, line 22, overstrike "a." and insert immediately thereafter:

"(1)"

Page 8, line 25, overstrike "b." and insert immediately thereafter:

"(2)"

Page 8, line 26, remove the overstrike over "one"

Page 8, line 26, remove "five"

Page 8, line 26, overstrike "hundred" and insert immediately thereafter "thousand"

Page 8, line 27, overstrike "Otherwise it is a" and insert immediately thereafter:

"c. A"

Page 8, line 27, after "misdemeanor" insert "in all other cases"

Page 8, after line 27, insert:

**"SECTION 11. AMENDMENT.** Section 12.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-01. Classification of offenses - Penalties.**

Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for

parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.

2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of ~~ten~~twenty thousand dollars, or both, may be imposed.
3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of ~~ten~~twenty thousand dollars, or both, may be imposed.
4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of ~~five~~ten thousand dollars, or both, may be imposed.
5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of ~~two~~three thousand dollars, or both, may be imposed.
6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand five hundred dollars, or both, may be imposed.
7. Infraction, for which a maximum fine of ~~five hundred~~one thousand dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

**SECTION 12. AMENDMENT.** Section 12.1-32-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-01.1. Organizational fines.**

Any organization, as defined in section 12.1-03-04, shall, upon conviction, be subject to a maximum fine in accordance with the following classification:

1. For a class A felony, a maximum fine of ~~fifty~~one hundred thousand dollars.
2. For a class B felony, a maximum fine of ~~thirty-five~~seventy thousand dollars.
3. For a class C felony, a maximum fine of ~~twenty-five~~fifty thousand dollars.
4. For a class A misdemeanor, a maximum fine of ~~fifteen~~thirty thousand dollars.

5. For a class B misdemeanor, a maximum fine of ~~ten~~twenty thousand dollars.

VK 393

Nothing in this section shall be construed as preventing the imposition of the sanction provided for in section 12.1-32-03, nor as preventing the prosecution of agents of the organization under section 12.1-03-03."

Renumber accordingly

Date: 4-1-13  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2251

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8230.01603 purposed

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

Motion Made By Rep. Klemin Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*voice vote carried*

Date: 4-1-13  
Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE**  
**ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2251**

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. Delmore Seconded By Rep. Brabandt

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning			Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Klemin

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

**REPORT OF STANDING COMMITTEE**

**SB 2251: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2251 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "12.1-21-04,"

Page 1, line 3, after the fourth comma insert "12.1-32-01, 12.1-32-01.1,"

Page 2, remove lines 18 through 30

Page 3, remove lines 1 and 2

Page 8, line 10, remove the overstrike over "æ"

Page 8, line 10, remove "five"

Page 8, line 10, overstrike "hundred" and insert immediately thereafter "thousand"

Page 8, line 19, overstrike the first "a" and insert immediately thereafter ":

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Page 8, line 26, remove "five"

Page 8, line 26, overstrike "hundred" and insert immediately thereafter "thousand"

Page 8, line 27, overstrike "Otherwise it is a" and insert immediately thereafter:

c. A"

Page 8, line 27, after "misdemeanor" insert "in all other cases"

Page 8, after line 27, insert:

**"SECTION 11. AMENDMENT.** Section 12.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-01. Classification of offenses - Penalties.**

Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for

parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.

2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of ~~ten~~twenty thousand dollars, or both, may be imposed.
3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of ~~ten~~twenty thousand dollars, or both, may be imposed.
4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of ~~five~~ten thousand dollars, or both, may be imposed.
5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of ~~two~~three thousand dollars, or both, may be imposed.
6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand five hundred dollars, or both, may be imposed.
7. Infraction, for which a maximum fine of ~~five hundred one thousand~~ dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

**SECTION 12. AMENDMENT.** Section 12.1-32-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-01.1. Organizational fines.**

Any organization, as defined in section 12.1-03-04, shall, upon conviction, be subject to a maximum fine in accordance with the following classification:

1. For a class A felony, a maximum fine of ~~fifty~~one hundred thousand dollars.
2. For a class B felony, a maximum fine of ~~thirty-five~~seventy thousand dollars.
3. For a class C felony, a maximum fine of ~~twenty-five~~fifty thousand dollars.
4. For a class A misdemeanor, a maximum fine of ~~fifteen~~thirty thousand dollars.
5. For a class B misdemeanor, a maximum fine of ~~ten~~twenty thousand dollars.

Nothing in this section shall be construed as preventing the imposition of the sanction provided for in section 12.1-32-03, nor as preventing the prosecution of agents of the organization under section 12.1-03-03."

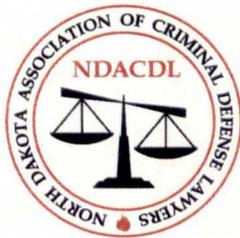
Renumber accordingly

**2013 TESTIMONY**

**SB 2251**

<b>1981</b>		<b>2012</b>
78,200 .00	New House	250,000.00
66,400.00	Existing House	209,000.00
1.25	Gallon of Gas	3.00-4.00
.79	Loaf of Bread	2.00
.18	Stamp	.45
2.22	Gallon of Milk	4.00
.15-.17	McD's Hamburger	1.19
7,718.00	Car	20,000.00 and up
450.00	1oz. gold	1722.65
4.00	Movie Ticket	8.00-10.00
17,293.00	Median Household Income	47,000.00
3.99	1lb Shrimp	8.99
994.8 Billion	National Fed Debt	15.566 Trillion
2.75-3.00	Men's Haircut	15.00
.30	Candy Bars	1.00
.79	Toothpaste	3.00

2251 (2)



# NORTH DAKOTA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

To: Senate Judiciary Committee, Chairman David Hogue  
Re: Grading of theft offenses – SB 2251

**Recommendation:** NDACDL recommends a “Do Pass” of SB 2251

The North Dakota Association of Criminal Defense Lawyers (NDACDL) recommends that SB 2251 receive a “DO Pass” vote from this Senate Judiciary Committee. Currently, the theft of anything \$500 or above is a felony, below \$500 is a

misdemeanor offense. The request to change the dollar amount takes into consideration several factors including a review of the statutes of our neighboring states; lack of change to the statute in over thirty years coupled with significant change to the Consumer Price Index (CPI); reduced resources available to the State of North Dakota due to population changes; the amount of resources expended on individuals convicted of a felony; and our collective experiences as practitioners in the current climate and economy.

As you may know, anyone convicted of a felony in ND is sentenced to probation through the North Dakota Department of Corrections. At the very least, those individuals are entitled to two hearings and a trial, an attorney at public expense if they cannot afford one, and often take more time from the judicial system simply because of the level of offense. Simply put, felonies are expensive. Our state and county resources pay the judge, prosecutor, public attorney if applicable, the probation officer, court officers, and jailers. As we face full jails, large and unmanageable caseloads for probation officers, and increased court dockets, a change to theft gradation is a simple, housekeeping update to our law that just makes sense.

Our neighboring states have increased the amounts on felony level offenses over the last decade for the very same reasons we propose today. The report by Legislative Counsel to this Committee states that \$500 in the 1970’s, would be worth approximately \$2,200 today. In the early 1980’s, it would have been worth over \$1,200. The state has reached a critical point where the law with respect to felony theft has left it decades behind at a time where population increases continue to put strains on our judicial and correctional systems.

## Quick Facts

1. The \$500 Felony offense level was enacted more than 30 years ago.
2. According to the study prepared by Legislative Counsel for this Committee, the \$500 amount is equal to approximately \$2,200 today.
3. The states of Iowa, Minnesota, South Dakota, and Wisconsin all have statutes that require a value of \$1,001 to be charged as a felony. North Dakota, if the law is amended, would be equal to Wyoming, the lowest of our neighbors at \$1,000. Wisconsin requires a value of \$2,500.
4. Felonies take greater judicial and corrections resources. Felonies also are more likely to require jail space. North Dakota is facing a crisis in all of these areas.
5. Today, it is nearly *5 times easier* to reach the felony level than it was when the law was enacted.

We know and understand that the lawmakers and citizens of North Dakota do not want to be “soft on crime”. Therefore, our recommendation is both conservative and fact based. NDACDL is not requesting that this committee or the 2013 legislature reach beyond inflation or the price index. Instead, we ask that the felony level offense be set at \$1,000 as an update to our law – one that is much needed and will have a positive impact on our overtaxed resources.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2251

Page 1, line 4, after the first comma insert "27-10-01.4,"

Page 1, line 5, after the first "penalty" insert "and monetary amounts for contempt sanctions"

Page 9, after line 14, insert:

"SECTION 13. AMENDMENT. Section 27-10-01.4 of the North Dakota Century Code is amended and reenacted as follows:

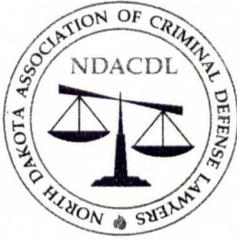
**27-10-01.4. Remedial sanctions - Punitive sanctions for nonsummary and summary procedure - Past conduct.**

1. A court may impose one or more of the following remedial sanctions:
  - a. Payment of a sum of money sufficient to compensate a party or complainant, other than the court, for a loss or injury suffered as a result of the contempt, including an amount to reimburse the party for costs and expenses incurred as a result of the contempt;
  - b. Imprisonment if the contempt of court is of a type included in subdivision b, c, d, e, or f of subsection 1 of section 27-10-01.1. The imprisonment may extend for as long as the contemnor continues the contempt or six months, whichever is shorter;
  - c. A forfeiture not to exceed two thousand dollars for each day the contempt continues;
  - d. An order designed to ensure compliance with a previous order of the court; or
  - e. A sanction other than the sanctions specified in subdivisions a through d if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt.
2. a. A court, after a finding of contempt of court in a nonsummary procedure under subdivision b of subsection 1 of section 27-10-01.3, may impose for each separate contempt of court a fine not exceeding ~~one~~ two thousand

dollars, imprisonment in the county jail for not more than one year, or both.

- b. A court, after a finding of contempt of court in the summary procedure under subsection 2 of section 27-10-01.3, may impose for each separate contempt of court a fine of not more than ~~five hundred~~ two thousand dollars, imprisonment in the county jail for not more than thirty days, or both.
- 3. A punitive sanction may be imposed for past conduct that was a contempt of court even though similar present conduct is a continuing contempt of court.”

Renumber accordingly



# NORTH DAKOTA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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