

2013 SENATE JUDICIARY

SB 2340

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2340
2/4/2013
Job #18202

Conference Committee

Committee Clerk Signature



Minutes:

Attached testimony

Relating to theft of prescription drugs

Senator David Hogue - Chairman

Senator Sitte - District 35 - Introduces the bill - See written testimony (1)

Opposition

Aaron Birst - Association of Counties - Object to the bill. He corrects some of the information from Senator Sitte's testimony. He says there is not a lot of cases of theft of prescription drug and the one's they do have aren't the single individual pill. He suggests making this a study resolution.

Senator Hogue - Asks him if he opposes the bill because of the idea State's Attorney's would like to be able to charge someone with a felony in the appropriate case where they have an organized effort to steal prescription drugs.

Birst - Replies that the reason they supported it last session was for the problem with how to define what a prescription drug is in terms of theft of property. Street value is more than the value of the pill.

Senator Sitte - Asks if someone is selling prescription drugs isn't that covered in another code.

Birst - Replies yes in the 19th Chapter.

Senator Sitte - States since it is already covered and if they want to put in a quantity but she believes a prescription pill is over the top. She would be open to a suggestion and an amendment. She gives an example of someone who stole a single pill.

Senator Lyson - States it has to be investigated for theft before anything can be done.

Birst - He mentions the grading of offenses. He said the cases they are seeing for instance would be a large amount of drugs from a nursing home and no way to put a dollar amount on that.

Julie Lawyer - Assistant Attorney General - Attorney General's Office - See written testimony.

Mark Hardy - Assistant Executive Director State Board of Pharmacy - See written testimony.

Senator Hogue - Asks him if drug theft is on the rise.

Hardy - Said his office keeps records of pharmacy burglaries that are submitted to them. They do see an increase.

Neutral

Close the hearing on 2340

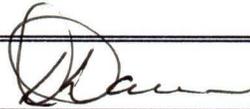
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2340
2/13/2013
Job #18875

Conference Committee

Committee Clerk Signature



Minutes:

vote

Senator David Hogue - Chairman

Committee work

Senator Sitte proposes an amendment and explains what it does. She proposes a new section to study. The study would study all the penalties for minor drug crimes, sentencing, and alternatives to incarceration for first time felony drug offenses that are non-violent excluding distribution of drugs.

Senator Sitte moves the amendment
Senator Armstrong seconded

Discussion

Senator Hogue asks how many pills they would have to possess. Senator Armstrong said it is very hard to determine the cost of the drugs stolen because of the street value being more. Senator Grabinger thinks the study should be done first before any changes are made to the law.

Senator Sitte withdraws her motion so that Senator Berry can read up on it.

Later in afternoon

Senator Sitte moves the amendment .01002
Motion fails for lack of a second

Senator Sitte moves amendment hog housing the bill
Senator Armstrong seconded

Discussion

Committee discusses that this is a hog house amendment.

Vote 7 yes, 0 no

Senator Sitte moves a do pass as amended
Senator Berry seconded

Senate Judiciary Committee
SB2340
2/13/2013
Page 2

Vote - 7 yes, 0 no
Senator Sitte will carry

February 12, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2340

Page 1, line 2, after "drugs" insert "; and to provide a legislative management study"

Page 2, line 8, remove the overstrike over

~~"k. The property stolen is"~~

Page 2, line 8, after "a" insert "more than twenty manufactured dosing units of a"

Page 2, line 8, remove the overstrike over "~~prescription drug as defined in section 43-15.3-01.~~"

Page 2, after line 8, insert:

"SECTION 2. LEGISLATIVE MANAGEMENT STUDY - PENALTIES FOR MINOR DRUG CRIMES. During the 2013-14 interim, the legislative management shall consider studying the sentencing alternatives to incarceration for first time felony drug offenses that are nonviolent, excluding the distribution of drugs. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

February 13, 2013

JB
2-13-13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2340

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of penalties for minor drug crimes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - PENALTIES FOR MINOR DRUG CRIMES. During the 2013-14 interim, the legislative management shall consider studying the sentencing alternatives to incarceration for first-time felony drug offenses that are nonviolent, excluding the distribution of drugs. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

Date: 2/13/12
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2340

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0850.01002 - pt 1st half

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

Motion Made By S. Sitte Seconded By no second

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

Total (Yes) _____ No _____

Absent motion fails

Floor Assignment _____

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

Date: 2/13/13
 Roll Call Vote #: 2

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2340**

Senate JUDICIARY Committee

Check here for Conference Committee Delete Sec 1 - Hog House

Legislative Council Amendment Number Sec 2 only on 13.0856, 61002

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

Motion Made By S. Sitte Seconded By S. Armstrong

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

Total (Yes) 7 No 0

Absent _____

Floor Assignment S

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

Date: 2/13/13
 Roll Call Vote #: 3

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2340**

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. Berry

	No	Senator	Yes	No
		Senator Carolyn Nelson	<input checked="" type="checkbox"/>	
Vice Chairman Margaret Sitte	<input checked="" type="checkbox"/>	Senator John Grabinger	<input checked="" type="checkbox"/>	
Senator Stanley Lyson	<input checked="" type="checkbox"/>	<u>Senator Hoque</u>	<input checked="" type="checkbox"/>	
Senator Spencer Berry	<input checked="" type="checkbox"/>			
Senator Kelly Armstrong	<input checked="" type="checkbox"/>			

Total (Yes) 7 No 0

Absent _____

Floor Assignment S. Sitte

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

REPORT OF STANDING COMMITTEE

SB 2340: Judiciary Committee (Sen. Hogue, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2340 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of penalties for minor drug crimes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - PENALTIES FOR MINOR DRUG CRIMES. During the 2013-14 interim, the legislative management shall consider studying the sentencing alternatives to incarceration for first-time felony drug offenses that are nonviolent, excluding the distribution of drugs. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

2013 HOUSE JUDICIARY

SB 2340

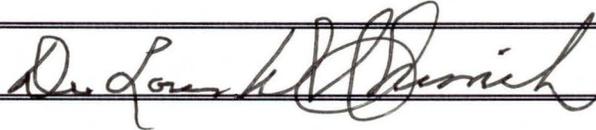
2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2340
March 19, 2013
Job # 20185

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Act to provide for a legislative management study of penalties for minor drug crimes.

Minutes:

Testimony #1

Chairman Kim Koppelman: Opened the hearing on SB 2340.

Senator Margaret Sitte: Introduced the bill. (See testimony #1) 0:45 - 6:48

Vice Chairman Larry Klemin: I would dispute your assertion that the average American commits seven felonies a day.

Senator Sitte: There are so many lies on the books that people have no idea.

Vice Chairman Larry Klemin: I think this would be a good area for the commission on alternatives of incarceration to study since that is the subject of this bill.

Senator Sitte: I was hoping that exactly.

Rep. Lois Delmore: Why did you choose only this section; were there not others that we could also study?

Senator Sitte: This bill started as a repealed of a bill I was actually a co-sponsor of last session. I have hearing people now automatically if they are being stopped and they have a pill without a prescription for it they are subject to questioning. Some legislators have told me they have their wives carry their medication in their purses so there are a lot of different cases. We realized it wasn't really the theft of the prescription pill but rather the possession of the pill and that opened up a can of worms that we could not figure out so the Association of Counties came in and said we would very much be in favor of this. I have had discussions with the judges and one of them said the number one thing you could do to reduce felonies would be to make paraphilia a misdemeanor.

Rep. Lois Delmore: There would be a difference for me carrying a prescription drug for my husband as opposed to me carrying my friends who has oxytocin and all the things if I

really wanted to be that seven felon person I could have a very good day. I think there is a different to what this could encompass.

Senator Sitte: Discussed a situation where a young girl had cleaned up her life from a possession of drugs conviction but then was stopped with a prescription drug in her possession so then she got one more slap down for this girl. I am not saying whether she is innocent or guilty, but maybe some of these things could be better addressed. I think we should be helping people and doing justice. 80% of our young people use illegal substances from a recent survey. Do we really want to make them all felons?

Chairman Kim Koppelman: The Judicial system does good work sorting out things. You just talked about someone who was charged with a felony but was on probation. Isn't that a good thing that she is on probation and hopefully that will help him or her stay on the straight and narrow and she isn't in prison?

Senator Sitte: These young people are making decisions that are going to be life changing. In many cases they are addicts. I am a firm believer in the good work of Rep. Larson and these organizations that help people turn their lives around.

Rep. Diane Larson: Our Attorney General was in the news about the epidemic of drug use. Is the purpose of your study to reduce the felony charges for drug possession?

Senator Sitte: I am hoping it is worded broadly enough that I would hope we would look at some of these felony charges for them. How many more jails are we going to build in the state and how many more people are we going to lock up? Are these people a danger to society that they need to be locked up? We have 42 people locked up for life in our prison; couldn't there be some other way to look at them. They are not violent crimes.

Chairman Kim Koppelman: Would you be opposed to non-violent offenses in general?

Rep. Ben Hanson: do you know at what point non-violent drug possession is mandatory to be incarcerated in the state of North Dakota. Is the intent here to disenfranchise the status of felony misdemeanor or to reduce incarceration?

Senator Sitte: Primarily we are looking at reducing incarceration, but I would like us to look at what is a felony because those two are so intricately linked.

Opposition: None

Neutral: None

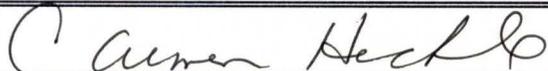
Hearing closed.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2340
March 25, 2013
Job # 20410

Conference Committee



Explanation or reason for introduction of bill/resolution:

Act to provide for a legislative management study of penalties for minor drug crimes.

Minutes:



Chairman Kim Koppelman: Opened SB 2340 for committee action.

Rep. Lois Delmore: I feel this is long overdue.

Chairman Kim Koppelman: I have one suggestion before you make a motion. I mentioned this to Senator Sitte and she had no problem with it. An amendment on line 6 to take out the word "drug" and substitute "non-violent". It would broaden the study to all first time non-violent felony offenses.

Rep. Diane Larson: If you do that you still have the drug offenses after that.

Chairman Kim Koppelman: But I think that is appropriate and it is her intent not to have distribution of drugs.

Rep. Diane Larson: But mentioning drugs at all when you are talking about any non-violent offenses and then excluding distribution of drugs doesn't make sense.

Chairman Kim Koppelman: Her intent was non-violent offenses relating to drugs be looked at as a question of whether they should be incarceration involved or not. Drug dealers even if it was a first offense, she didn't think it was appropriate to, that was her intent. What she is saying is non-violent offenses should be studied, non-violent drug use offenses should be studied but non-violent drugs sales or pushers she is not interested in looking at that.

Vice Chairman Larry Klemin: Made a motion to delete the word drug on line one and line six.

Rep. Bill Kretschmar: Second the motion.

Rep. Ben Hanson: I agree with the motion do you think it will make it harder for it to pass on the floor?

Chairman Kim Koppelman: I don't think so.

Vice Chairman Larry Klemin: In the title of the bill we ought to word non-violent. So it would be penalties for minor non-violent crimes.

Chairman Kim Koppelman: Substitute non-violent for drug on that line. We will amend that motion. Rep. Kretschmar are you alright with that?

Rep. Bill Kretschmar: Yes.

Voice vote - carried.

Rep. Lois Delmore: Made a do pass motion with amendment.

Rep. Ben Hanson: Second the motion.

Vote 13-1-0

Rep. Lois Delmore: Will carry the bill to the floor.

13.0850.02001
Title.03000

Adopted by the Judiciary Committee

March 25, 2013

VR
3/25/13

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2340

Page 1, line 1, replace "drug" with "nonviolent"

Page 1, line 4, replace "DRUG" with "NONVIOLENT"

Page 1, line 6, remove "drug"

Renumber accordingly

Date: 3-25-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2340

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. Klemin Seconded By Rep. Kretschmar

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: 3-25-13
Roll Call Vote #: _____

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2340**

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. Hanson

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 1

Absent 0

Floor Assignment Rep. Delmore

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

REPORT OF STANDING COMMITTEE

SB 2340, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2340 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "drug" with "nonviolent"

Page 1, line 4, replace "**DRUG**" with "**NONVIOLENT**"

Page 1, line 6, remove "drug"

Renumber accordingly

2013 TESTIMONY

SB 2340

Senate Judiciary Committee

SB 2340, February 4, 2013

Mr. Chairman and members of the committee, I am Margaret Sitte, senator from District 35 in Bismarck.

Last year when the Attorney General's office asked me to cosponsor SB 2241, making the theft of a prescription drug a felony, I did so. During debate on the Senate floor my conscience was awakened to the potential problems of that bill, but in the interim, I have become firmly convinced that it was a mistake to implement.

The reason we enacted this legislation was that an employee of a nursing home had acquired a large number of prescription pills and the local prosecutor didn't know how to prosecute because the actual value of the drugs was far less than the street value, and the amount didn't reach felony status. Let the prosecutor charge the person with multiple misdemeanors, but let's be careful of unintended consequence on the general public.

SB 2340 would remove the felony for the stealing of a prescription drug as defined in the attached section of the Century Code. Note the definition of prescription drug:

12. "Prescription drug" means any drug, including any biological product, except for blood and blood components intended for transfusion or biological products that are also medical devices, required by federal law, including federal regulation, to be dispensed only by a prescription, including finished dosage forms and bulk drug substances subject to section 503(b) of the federal Food, Drug, and Cosmetic Act [21 U.S.C. 3539(b)].

In other words, any medication in your possession for which you don't have a prescription can be a felony. In talking to a House member about this bill, she informed me that she carries her son's oxycontin pills because she doesn't want him having easy access to them, but she is able to recognize when he needs one. Technically, she could be prosecuted for having a prescription drug without the prescription in her name.

A brilliant young attorney in southwestern North Dakota recently told me the average American commits seven felonies a day. What happens when we have too many laws on the books is that we obsess over trivial crimes and we trivialize the really important crimes.

Putting someone in prison for up to five years because they have a prescription drug without the pill bottle is just plain bad policy. Laws should be a shield of the people, not a weapon in the hands of the state. It is our job as legislators to ensure that the law protects citizens from arbitrary government power and serves justice. We shouldn't create so many felony categories that all of our lives are left to prosecutorial discretion.

People who abuse prescription drugs are addicts, and those who have a pill should not be subject to the same Class C felony as someone who has a large quantity of pills without a prescription.

We have heard in this committee that felony court cases are up 17 percent. Inmate admissions in the Department of Corrections increased from 960 per year in 2011 to 1180 in 2012. After the hearing requesting three new judges, I spoke to some of the judges about what we as a legislative body can do to eliminate some of the court cases. The response was we should eliminate from felony status some of the petty drug crimes.

In his paper Reconsidering Incarceration, new directions for reducing crime, Don Stemen says between 1970 and 2005 state and federal authorities increased prison populations by 628 percent. Yet he cited studies that found that higher incarceration rates were associated with higher crime rates.

Stemen says the six-fold expansion of the prison population has resulted in the imprisonment of large numbers of nonviolent, "marginal" offenders. Between 1980 and 2005, the number of inmates incarcerated for drug possession in state prisons or local jails grew by more than 1,000 percent at a cost of more than \$8 billion annually.

The "crowding out" effect of incarcerating petty drug offenders prevents the incarceration of those prone to more serious crime, thereby reducing the effectiveness of incarceration to reduce crime. Future increases in drug offenders' incarceration will accomplish less and do more. Washington state found that it costs more to incarcerate petty drug offenders than the average value of the crimes prevented by their imprisonment.

Other types of punishment can sometimes be more productive in reducing crime: fines, probation, community service, drug treatment and other sanctions have been shown to suppress crime.

To lock someone up for up to five years because he or she has a prescription pill for which they don't have a prescription is absolutely ludicrous. In casual conversation with the Burleigh County sheriff last fall, I learned that the jail was at capacity, and the sheriff lamented his hands were tied because they were all felons.

Remember, being a felon has lifelong consequences, often dooming a ^{PERSON} ~~mercy~~ to minimum wage for life. We have heard the issue in regard to gun ownership that once a felon always a felon as far as federal records go.

In re-reading the state Constitution a couple weeks ago, I noticed Article I, Section 10. "Until otherwise provided by law, no person shall, for a felony, be proceeded against criminally,

otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger. In all other cases, offenses shall be prosecuted criminally by indictment or information. The legislative assembly may change, regulate or abolish the grand jury system."

Think of it. Our forefathers saw the charge of felony as being so serious that one would have to convene a grand jury for an indictment. They never would have considered depriving someone of liberty for up to five years because they were in possession of a single pill. I urge a Do Pass on SB 2340.

Senate Judiciary Committee
Senate Bill 2340
Testimony of Julie Lawyer, Assistant Attorney General
February 4, 2013

Chair Hogue and Members of the Committee:

My name is Julie Lawyer and I am prosecutor with the Attorney General's Office assigned to prosecute drug crimes. I have been a prosecutor for 13 years. I am here this morning in opposition of Senate Bill 2340.

Two years ago, at the last legislative session, I was before this committee in support of the bill that made theft of a prescription drug a class C felony offense. The only mechanism prosecutors had at that time to charge theft of a prescription drug was to determine the monetary value of the prescription and then charge the offense according to that value. Typically, the value of the drugs stolen was less than \$250, making it a class B misdemeanor offense to steal another's prescription medication.

As a drug prosecutor, I have been seeing more and more cases involving prescription controlled substances, such as Oxycodone and Hydromorphone. There are a number of ways that people are getting these drugs, including going to multiple doctors, clinics, hospitals, and pharmacies to get their own prescriptions or stealing others' prescriptions.

Possession of these drugs is a class C felony, but the theft is only a class B misdemeanor. The problem isn't limited to just theft of controlled substances. Two years ago, I used the example of a Burleigh County case in which an individual went to the emergency room of a Bismarck hospital, complaining of pain in order to get controlled substances. He was eventually admitted to the hospital. During the night, he began wandering around the hospital looking for controlled substances to steal.

He found a "crash cart" in a hallway which contained emergency prescription medication. He broke into and stole some medications. None of these medications were controlled and the value of the medications he stole was under \$250, making the theft of those emergency medications a class B misdemeanor.

Luckily, in this case, another patient saw what happened and the nurses were able to recover the medication and restock the crash cart, but in that case, the theft involved emergency medications and this theft could have caused dire consequences if it had gone undetected.

The true value of prescription medications to the person who actually needs them is more than their actual monetary value and the law should reflect that.

Since this law has passed, I am aware that cases have been charged out in Burleigh, Cass, and Grand Forks counties. The prescription drugs which were stolen consisted of Hydrocodone, Amphetamine, Oxycodone, Clonazepam, Omeprazole (anti-acid) and Dextroamphetamine, Gabapentin (anti-epileptic and nerve pain) and Lorazepam, and multiple prescriptions stolen during a burglary of a pharmacy to include both controlled and non-controlled substances.

I do recall from last session, the concern of some members who did not want to see someone charged with stealing one tablet of Grandpa's high blood pressure medication. I have not seen or heard of any such case being prosecuted.

By comparison, other criteria for a C felony theft include ammunition (any amount), a vehicle (regardless of value), a government document, or livestock (regardless of value).

With prescription drugs being one of the top drugs of abuse in the state, it makes sense to leave this statute in place.

Thank you.



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Mark J. Hardy, PharmD, R.Ph.
Assistant Executive Director
Howard C. Anderson, Jr, R.Ph.
Executive Director

Senate Judiciary Committee - Senate Bill 2340 **9:00AM –February 4th, 2013 –Fort Lincoln Room**

Chairman Hogue and members of the Senate Judiciary Committee, for the record I am Mark J Hardy, Pharm D, Assistant Executive Director of the North Dakota Board of Pharmacy. I appreciate the opportunity to speak to you about SB2340.

The Board of Pharmacy opposes SB2340 and the subsequent change to eliminate the criminal charge associated with the theft of prescription drugs. Prescription drug theft is a large widespread issue that continues to have multiple sources. Both drug thefts associated with individuals stealing for their own use and also system theft to feed a gray market for pharmaceuticals are continuing to happen throughout the nation. The problems are certainly not limited to narcotic drugs or controlled substances.

Theft of prescription medication is on the rise. During 2010, there was approximately \$185 million in stolen prescription drugs in the U.S. In addition, the value of pharmaceutical products has risen by 350 percent since 2007, with products being sold on the street or repackaged and resold to medical suppliers, with potentially dangerous consequences when drugs are not properly stored

I cannot speak with a lot of knowledge to the specific criminal charge that should be associated with the theft of non-controlled prescriptions. However, a proper framework is necessary to deter the theft of prescription drugs and bring those guilty to justice.

I would be happy to answer any questions you may have. I appreciate your time.

House Judiciary Committee

SB 2340, March 19, 2013

Mr. Chairman and members of the committee, I am Margaret Sitte, senator from District 35 in central Bismarck.

A young attorney in southwestern North Dakota recently told me the average American commits seven felonies a day. There's a popular book called, *Three Felonies a Day*. What happens when as a society, we have too many laws on the books? Do we begin to obsess over trivial crimes and trivialize the really important ones? The United States locks up more people in the world than anyone else in the world, yet as a state, we continue to create new crimes.

Laws should be a shield of the people, not a weapon in the hands of the state. It is our job as legislators to ensure that the law protects citizens from arbitrary government power and serves justice. We shouldn't create so many felony categories that all of our lives are left to prosecutorial discretion.

For example, is it just to put someone in prison for up to five years because he or she has a prescription drug without a prescription? Would people who abuse prescription drugs be better served in treatment or with a 24/7 program? Should those who have one pill be subject to the same Class C felony as someone who has a large quantity of pills without a prescription?

We heard in Senate Judiciary that felony court cases are up 17 percent. Inmate admissions in the Department of Corrections increased from 960 per year in 2011 to 1180 in 2012. After the hearing requesting three new judges, I spoke to some of the judges about what we as a legislative body can do to eliminate some of the court cases. The response was we should eliminate from felony status some of the petty drug crimes.

In his paper *Reconsidering Incarceration*, new directions for reducing crime, Don Stemen says between 1970 and 2005 state and federal authorities increased prison populations by 628 percent. Yet he cited studies that found that higher incarceration rates were associated with higher crime rates.

Stemen says the six-fold expansion of the prison population has resulted in the imprisonment of large numbers of nonviolent, "marginal" offenders. Between 1980 and 2005, the number of inmates incarcerated for drug possession in state prisons or local jails grew by more than 1,000 percent at a cost of more than \$8 billion annually.

The "crowding out" effect of incarcerating petty drug offenders prevents the incarceration of those prone to more serious crime, thereby reducing the effectiveness of incarceration to reduce crime. Future increases in drug offenders' incarceration will accomplish less and do

more. Washington state found that it costs more to incarcerate petty drug offenders than the average value of the crimes prevented by their imprisonment.

Other types of punishment can sometimes be more productive in reducing crime: fines, probation, community service, drug treatment and other sanctions have been shown to suppress crime.

In casual conversation with the Burleigh County sheriff last fall, I learned that the jail was at capacity, as are many jails in our state. The sheriff lamented his hands were tied because they were all felons.

Remember, being a felon has lifelong consequences, often dooming a person to minimum wage for life. The defense attorneys of North Dakota has listed 257 collateral consequences to being a felon. We have heard the issue in regard to gun ownership that once a felon always a felon as far as federal records go. A felony truly is a game changer for life.

In re-reading the state Constitution a couple weeks ago, I noticed Article I, Section 10. "Until otherwise provided by law, no person shall, for a felony, be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger. In all other cases, offenses shall be prosecuted criminally by indictment or information. The legislative assembly may change, regulate or abolish the grand jury system."

Think of it. Our forefathers saw the charge of felony as being so serious that one would have to convene a grand jury for an indictment. They never would have considered depriving someone of liberty for up to five years because of some of the crimes currently on the books. I urge a Do Pass on SB 2340.