

2015 SENATE JUDICIARY

SB 2030

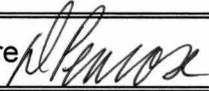
2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2030
1/12/2015
21828

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

1, 2, 3 and 4

Ch. Hogue: We will open the hearing on SB 2030.\

John Bjornson, Legislative Council: This is the final bill today from the Commission on Alternatives to Incarceration. This is an idea that was bounced around in a couple of bills. There is an amendment because there was a drafting error in the original bill. This section deals with possession of drug paraphernalia. The current law has possession for growing and manufacturing and use, injection, ingestion, inhaled or otherwise introduced to the human body in one section. Under current law a class C felony, other than marijuana which is a class A misdemeanor. This bill breaks it down into three subsections. The first subsection deals with the manufacturer or preparing of the drug, the paraphernalia that is used in that process; it would leave that as a class C felony, for drugs other than marijuana, which is in the strike out on line 14 needs to be addressed in the amendment. The second subsection addresses the paraphernalia that is related to the use of the drug. That would put most of the drugs at a class A misdemeanor. Subsection 3 deals with the paraphernalia for ingesting or using marijuana and that makes it a class B misdemeanor. This bill is intended to break down and define clearly the offenses, depending on the type of drug and trying to match the penalty with the nature of the drug and separate the use component from the manufacturer component.

Ch. Hogue: Thank you.

Sen. Armstrong: (see attached #1) Rep. Klemin drafted the amendment and through the drafting process I think there was an omission of a particular part of the marijuana and through the omission it would have made the possession of paraphernalia for growing or planting to still remain a class C felony while all other things would be a class A or B misdemeanor. This moves it into line with the underlying charge of marijuana and keeps it consistent. I don't think it was the intent of the Alternatives to Incarceration to enhance any penalties relating to this. This is trying to get everything in line with the underlying offense.

Ch. Hogue: Further testimony in support.

Mike Reiten, Chief of Police, West Fargo, ND: Support (see attached #2).

Pat Bohn, Director for Transitional Planning Services, ND DOCR: Support (see attached 3).

Sen. Luick: How many traffickers are being caught today, is the supply chain being lessened in any way in the state of ND.

Pat Bohn: I can't answer that question. We have a number of people that are in our facilities because of drug trafficking. Last year I did a one day analysis and there were 36 people that were in our state prisons serving some sentence under the minimum mandatory portion of Title 19. Those could be repeat drug manufacturers or deliverers.

Ch. Hogue: Thank you. Further testimony in support.

Jackson Lofgren, ND Association of Criminal Defense Lawyers: We urge a Do Pass on SB 2030. This is a good bill. It cleans up 19-03.4-03 right now as the statute reads currently. It is kind of ambiguous as to how you can read it. There are some states attorneys that treat everything that it meph related or narcotic related as a class C felony. Others read it and depending on what the paraphernalia is, they find those could be class A misdemeanor. There is somewhat of an internal ambiguity in the statute itself. One of the most important parts of the changes that SB 2030 corrects is in relation to marijuana and marijuana paraphernalia. Currently small amounts of marijuana are a class B misdemeanor. Any type of marijuana paraphernalia is a class A misdemeanor. That kind of creates an illogical situation in which you can have a bag of marijuana in your pocket and you get in more trouble for the bag than the marijuana. That is the situation that exists. The paraphernalia itself is more severe of a penalty than the actual substance itself. It creates a problem because class B misdemeanors in ND go through municipal court. Class A misdemeanors cannot. Class A misdemeanors have to go through district court. So let's say that you have a patrolman from Bismarck that picked someone up and they have a little marijuana in a pipe. That officer ends up sending those cases to two different places. The Class B misdemeanor portion goes to municipal court, the A misdemeanor portion goes to city court. Now this person, where their conduct is one thing, now has two court cases, and if they are indigent they get two different public defenders; because the public defenders system isn't the same. Now you have public defender A in Bismarck city court, public defendant B in Bismarck district court. You have two separate cases; two separate sets of court appearances, two separate trials, you potentially have the same officer having to come to two separate jury trials that cover the exact same series of facts all because we've made paraphernalia for marijuana a class A misdemeanor instead of a B. It creates a burden on the system, it doesn't really present any real sense as to why we treat the paraphernalia worse than the actual substance itself. If any part of SB 2030 survives, I would ask that that survive because, at this time, it burdens the system for no purpose.

Ch. Hogue: Thank you. Testimony in support. Testimony in opposition.

Aaron Birst, Association of Counties: I deal primarily with prosecutor issues. We support the class B misdemeanor application of marijuana paraphernalia, we do not support

reducing paraphernalia for meth to an A misdemeanor. Frankly, we find that people who use IV drug use are going to be back in the system and making that an A misdemeanor is not the right message. I do agree with the DOCR that we can't incarcerate ourselves out of these problems. We do need to strengthen our treatment. We need to strengthen other avenues other than corrections. The reality is if you are caught with meth., you aren't in the penitentiary simply because you used meth. You're caught because you are out burglarizing to support your habit, so the perception that we are incarcerating people simply because they have treatment problems is not correct. I do support the marijuana provisions of this bill.

Sen. Armstrong: When you have a felony possession of paraphernalia charge under current law, there can also be a companion felony possession of the drug charge, correct.

Aaron Birst: Correct.

Sen. Armstrong: If someone gets caught with a meth pipe and a little bit of meth, even if this law passes, they would be charged with one A misdemeanor and one C felony, instead of two C felonies.

Aaron Birst: That would be correct. From the overall philosophy of what my folks are saying is to keep the paraphernalia the same offense level as the underlying drug. As Mr. Lofgren and others have indicated the separation of A vs. B for marijuana doesn't necessarily make sense. There are some logical reasons to do that, but we are fine and just keeping it the same. To your point, you are probably suggesting well, you can keep the C felony anyway if there is some sort of residue there. True, but it makes no sense to break them up like that.

Ch. Hogue: Further testimony in opposition to SB 2030. Any neutral testimony.

Don Donlin, Chief of Police, Bismarck ND: Neutral opinion (see attached #4).

Ch. Hogue: Thank you. Further neutral testimony.

Pat Heinert, Burleigh County Sheriff and Jail Administrator for Burleigh County Detention Center: The first clarification point and I don't want anyone left with the perception that we have the majority of the people in our jail facility on drug paraphernalia. It may be one of the charges that they are there on. But there are typically, if it is drug paraphernalia, there is also another subsequent felony charged with that as well. It's not just strictly the paraphernalia charge. The other point is in reference to the treatment; my thought process on this is that we need to look at the entire treatment option for what we are doing with our sentences. We talked about treatment a lot, law enforcement is talking about treatment a lot more. In the state of ND, treatment people are not easy to come by. We don't have a lot of treatment programs and our laws are quite strict in how to become a counselor and what you have to do to become a certified addiction counselor. Years ago, we used to have an addiction person working in our jail facility. They did not meet the minimum requirements to become certified addiction counselors, so we were forced to remove that position from our jail setting. We have no one really working with anybody in our jail right now that can even direct people to a treatment facility or assist them or their families and

helping them like we did in the past. One of my thoughts is that we need to look at that first and look at some other forms and some lesser forms of degrees, graduated steps, licensing depending on what they need to be within this system for counselors. That would be my thought. I'm kind of going a different way in that the requirement of needing 9 months of internship that the people have to do to become certified. That is very lengthy, very difficult for a lot of people to do and then come out and take a job at \$40,000-50,000/year. It doesn't work out really well, I think that's part of the reason that we need something different. It would be beneficial to all of us, especially the local jails; to hire some people that would work with the addicted people who we get in our facilities and try to get them into a treatment program or even start treatment programs within our facilities.

Sen. Grabinger: Our committee did take that up and it is concerned with the alternatives to incarceration committee, we took that up during the interim. There is an effort and even a proposal with the Governor's budget to increase some crisis centers out in the west. We are looking at the addiction counseling requirements and some of us have even spoken to the need to revisit the treatment programs that we had at the State Hospital that offered those treatment programs just as you were suggesting. I realize that those have been eliminated in large part and we need to look at that again.

Ch. Hogue: I'm familiar with the capacity issues in Williams and Ward counties, can you speak to capacity in the Burleigh County jail.

Pat Heinert: Our current capacity in the current Burleigh County facility is 138 beds. We are currently in the bid process right now in conjunction with Morton County across the river in Mandan to build a combined center here in Bismarck. Morton Counties capacity today is 42 I believe, the number of inmates they can house. Our new facility will be in the neighborhood of 476 beds.

Ch. Hogue: So more than doubling current capacity.

Pat Heinert: Almost tripling.

Ch. Hogue: What do you anticipate that the bids are going to be for that.

Pat Heinert: The bids are out right now. We're accepting bids through Feb. 18th. The proposed budget for the total complex, which also includes some renovation of the current Burleigh County Jail facility to turn that into court space and office space, and renovation of the Morton County facility to turn that into office space; that is approximately \$69.9 million.

Ch. Hogue: That is for everything, including new jail space.

Pat Heinert: Yes.

Sen. Armstrong: (addressed to Aaron Birst) Would your aversion to the reduction to a misdemeanor be lessened if misdemeanor still had two years of probation in place. That's the nice thing about hearing both bills today.

Aaron Birst: As in you could still get two years of supervised probation for an A misdemeanor, meth charge. I think that would certainly be helpful. Generally the meth. addicted folks require much more than a year of any type of treatment program. Generally that has to be confined is what we have been finding. So it could help lessen it but then you still run into the problem of having multiple C felony possession and an A misdemeanor paraphernalia, depending on the product.

Ch. Hogue: Thank you. Any other neutral testimony. We will close the hearing on SB 2030.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2030
2/9/2015
23443

- Subcommittee
 Conference Committee

Committee Clerk Signature *D Penrose*

Minutes:

Ch. Hogue: We will take a look at SB 2030. This bill deals with people who are manufacturing and distributing marijuana.

Sen. Grabinger: To appease some critics. This was a very difficult bill to put together to make the officer's association and states attorney to get on board. I don't know if we will ever have everybody on board, but it was a best case scenario to attempt to do so.

Sen. Armstrong: I move the amendment, 15.0211.01001 from Rep. Klemin.

Sen. Casper: Second the motion.

Ch. Hogue: We will take a voice vote. Voice vote, motion carried. We now have the bill before us as amended.

Sen. Grabinger: I move a Do Pass as amended.

Sen. Armstrong: Second the motion.

6 YES 0 NO 0 ABSENT DO PASS AS AMENDED
CARRIER: Sen. Grabinger

TJ
2/9/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2030

Page 1, line 9, after the eighth comma insert "or"

Page 1, line 9, overstrike the ninth comma

Page 1, line 14, remove the overstrike over "~~other than marijuana,~~"

Page 1, line 20, after "3." insert: "A person may not use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal marijuana in violation of chapter 19-03.1. A person violating this subsection is guilty of a class A misdemeanor."

4."

Renumber accordingly

Date: 2/9/15
Voice Vote # 1

2015 SENATE STANDING COMMITTEE
VOICE VOTE
BILL/RESOLUTION NO. 2030

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 15. 0211.01001 02000

- Recommendation: Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Sen. Armstrong Seconded By Sen. Casper

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Motion Carried.

REPORT OF STANDING COMMITTEE

SB 2030: Judiciary Committee (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2030 was placed on the Sixth order on the calendar.

Page 1, line 9, after the eighth comma insert "or"

Page 1, line 9, overstrike the ninth comma

Page 1, line 14, remove the overstrike over "~~other than marijuana~~;"

Page 1, line 20, after "3." insert: "A person may not use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal marijuana in violation of chapter 19-03.1. A person violating this subsection is guilty of a class A misdemeanor.

4."

Renumber accordingly

2015 HOUSE JUDICIARY

SB 2030

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2030
3/9/2015
24533

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to drug paraphernalia; and to provide a penalty.

Minutes:

Testimony #1,2,3.

Chairman K. Koppelman: Opened the hearing with testimony in support.

John Bjornson: Neutral on bill for information only. This bill is the last of your group that came from the commission alternatives to incarnation and those of you from last year would recollect this discussion. This bill essentially breaks down the section of law on enforcement of drug paraphernalia into four categories. Under the current law possession of most paraphernalia for manufacturing or ingesting or using is a class C felony if is a controlled substance other than marijuana. For marijuana it is a class A misdemeanor. This bill would address the paraphernalia with intent to grow or manufacture substances that are not marijuana. It would remain as a class C felony. Subsection 2 addresses the possession of paraphernalia to induct the substance into the body and other than marijuana it would be a class A misdemeanor. Subsection 3 address the manufacture or growth of marijuana and the materials of it be used in that process and it would set the penalty as a class A misdemeanor, and the last subsection it would be the paraphernalia used to introduce the substance marijuana into the body and it would set the penalty as a class B misdemeanor. He went through the bill changes.

Rep. L. Klemin: Is the distinction here between dealers and users.

John Bjornson: Yes there is a distinction between the two.

Chairman K. Koppelman: It appears that subsection 1 of the bill deals with intent and section 2 is more a possession.

John Bjornson: Yes

Pat Bohn, Director for Transitional Planning Services: (See Testimony # 1)

Rep. D. Larson: It surprises me the paraphernalia would be number one. What kind of success rate are you finding in your prison treatment programs? How long to people stay clean and sober leaving the penitentiary?

Pat Bohn: I think some of our people have that data and I would have to pull it. We provide mental health, congenital behavior programs etc. so it is hard to pin point any one thing being the reason for the improvement.

Rep. D. Larson: It is such a stubborn problem and such a hard thing to change. The pen with the evidence based program and treatment is that at least effective?

Pat Bohn: One of the other challenges is when you mix this population with criminally minded individuals. It becomes a challenge to treat the addiction and the negative effects of these people being exposed to other criminal thinking.

Rep. Brabandt: What percentage of your prison inmates are there because of illegal drugs?

Pat Bohn: About 70-75% have a drug or alcohol problem. I don't know the numbers?

Rep. K. Wallman: On page 2 of your testimony we are promoting the increase availability of treatment in our communities. There was an interim committee on this and did you testify there? Have you been able to advocate for funding?

Pat Bohn: I myself have not been a part of that. Dr. Lisa Peterson has been monitoring that work going on there. We only have a certain amount of availability in this state to provide certain services.

Rep. P. Anderson: The treatment programs that are offered in our jails are offered outside our jails so they could get them either way?

Pat Bohn: The answer is probably yes and no because it depends on the program. If we can get the funding to provide treatment in county jails we want them to use the same evidence base program so no matter where they are they get hit with the same stuff.

Chairman K. Koppelman: We had a question earlier what percentage of the prison population that this effects. Your testimony says about 25% of the DOCR population is in prison for drug crimes which includes paraphernalia. What percentage of that is paraphernalia versus possession or intent to distribute?

Pat Bohn: I am a clerk to the patrol board and this last docket we were working on we had 125 cases up for parole review and of those cases there were 76 accounts of drug paraphernalia. You may have one person that is in for two and someone else who is not.

Gerald Boyer, Lieutenant of the West Fargo Police Dept.: (See testimony #2)

Chairman K. Koppelman: What percent of the drug related offenses in the department you represent are paraphernalia versus use or intent to deliver?

Gerald Boyer: It has grown in West Fargo and daily there are accounts.

Chairman K. Koppelman: To what degree are those typically pled?

Gerald Boyer: They are district court.

Rep. Brabandt: Has drug use in West Fargo gone up or down?

Gerald Boyer: I can't answer that question because of the population growth. Our number of arrests has gone through the roof since I have been there. Drug use is probably up.

Rep. K. Wallman: Have you seen the increase in the more serious drug abuse to more serious drugs?

Gerald Boyer: Yes our stats in West Fargo are greatly increased in levels.

Rep. K. Wallman: So you are testifying in support of the reduced levels of misdemeanor be a fall back? You don't see any negative impact of allowing folks to have a lesser punishment even though the types of drug use is on the increase of amount of illegal drug use is increasing.

Gerald Boyer: The problem with some of the cases that have happened is that they aren't given a chance.

Opposition:

Ladd Erickson: I don't oppose the whole thing. Section 1 the current syringes and crack pipes and those kinds of things will go down to subsection 2 and become a misdemeanor. Section 3 is the marijuana grow area and Section 4 is the pot pipes. I know the States Attorney raised some points in the Senate. I went back and read all the debates and I don't think the issues with this bill have been addressed. In the mid-90s when drugs hit the state about paraphernalia. Bob Benate and I came before the committee in an interim about paraphernalia in the miscellaneous section of 12.1. No paraphernalia charges in title 19 where we have our drug stuff and that charge was being used in almost everything and being d=charged differently throughout the state. We did some research and eventually perfected the problems of the time. I wanted to raise some concerns. I have 3 items that exemplify my concern: a crack pipe (current law is a C felony, bill could make it a misdemeanor), syringe, number of doses they can get on cotton swabs. We have many paraphernalia charges as opposed to the possession is you don't through the paraphernalia out. You consume the drug but you reuse the items. There are many paraphernalia cases because those items are always there. The concern I have about the bill is that there is no minimum amount of heroin, cocaine, or methopfetimine that you need to charge possession of that substance. If I send the pipe to the lab and get a result of residue I can now charge you as a C felony. What we tried to do back then was not to have arbitrary and enforcement of the law where it matters is the philosophy of the police or state's attorney. We wanted uniformity. If put a distinction down again we will have arbitrariness. When a person comes into court on a felony they are not allowed to plead guilty initially. A bond is set, a court could appoint an attorney, and then we set up a

preliminary hearing. In the drug arena you have provided the executive branch many tools to start involving themselves. If a person doesn't have a record they could first be offered a year in prison with 11 months suspended, and I put in the bottom of my statement that I will consider treatment in lieu of jail time. We are encouraging them to start treatment. If it is person with a record we offer 3 years with the department of corrections, 18 months suspended, 18 to serve with the recommendation they go to the Thompkins's Rehabilitation program and also on those offers we will consider out of prison treatment in lieu of jail time. On those cases I won't allow a defendant, I will say we won't let them plead guilty until they prove they are successfully taking treatment. Stats show this process didn't work. The pen is the backing. The other concern I had was one speaker and it passed no one debated on the floor. Another concern was misdemeanors plead guilty. It takes a time to detoxify people. I am concerned that we are taking problematic people with serious problems and we are deescalating the problem. I think that stuff needs to be discussed. There are areas that I do support like the move for misdemeanor for marijuana paraphernalia. I would go a step further. Marijuana by driver is still an A and I would remove that. I would also consider in the last section about whether or not there is a need to consider prior conviction. Should supervision be enhanced after multiple convictions? I would go to an A misdemeanor. We have done a lot but I am worried. I think we can do more. I don't think this bill is taking in all of the hard work we have done.

Rep. Lois Delmore: You are speaking personally and not for the attorneys. I don't see that being left out here and we are looking for some consistency within the system. It may not be perfect. What would you really suggest and keep that uniformity and consistency within the program?

Ladd Erickson: if you are going to make paraphernalia and methamphetamine for usage an A misdemeanor for consistency and uniformity you need to make heroin and cocaine the same. You can't make the physical distinction between the items. The more you use it the less crimes you make under this.

Rep. Lois Delmore: You have already said you can get the residue out there and make the other charge. Putting them all under the same umbrella, there is a difference between someone who has a pipe and needle. They are not the same crime.

Ladd Erickson: I don't support making marijuana ingestion and stuff a felony but consistency is right, but I am going to send this pipe out to the lab to get the residue and charge a felony and claim. Someone else may charge it as a misdemeanor to clear the cases for whatever. If you're looking for consistency that's my concern. We would all do it different whereas now we are doing it the same.

Chairman K. Koppelman: Are you suggesting reduction and prosticutarial discretion?

Ladd Erickson: My concern is consistency.

Rep. D. Larson: Currently for possession of the other drug paraphernalia not the marijuana that is the same for the possession as the drug correct? This would be making it consistent with marijuana possession and marijuana paraphernalia possession. Do you see that most

states attorneys that you interact with try to do the same thing so they can get the thing pled down so they can accomplish the treatment portion before going to prison?

Ladd Erickson: Yes. There is not complete uniformity among attorneys but yes we have different levels of experience and background. Everyone may have a different approach. We are making the law inconsistent with the bill.

Rep. D. Larson: There are two points of view on whether it is consistent now. You don't know what happens in Grand Forks and you can't speak for Fargo or all the district courts.

Chairman Koppelman: The mood back then was get tough on crime. Now we are rethinking our solutions. The intent is to take a broad look at this and see if there are people getting charged for wrong reasons.

Ladd Erickson: I totally agree with you. That was the thinking back then. The people that are in the pen, the judges don't want to put them there but they are always caught and wasting the probationary officer's time. We don't know how many we stop by what we are doing.

Chairman Koppelman: Yet we see rising numbers. Are we correcting or punishing?

Rep. D. Larson: You mentioned that if there is a certain amount of the drug present in the paraphernalia then you can charge for the drug but there is a certain amount that needs to be there. What was that?

Ladd Erickson: You need to get lab report back that says you are not going to charge that upfront and if these are misdemeanors they will plead out but what we used to do was if you had someone you knew you would send it to lab. Sometimes there would be insufficient results but other times there would be residue and you could charge them with a C felony.

Rep. D. Larson: So if you send it into the lab and they say there isn't enough to charge then it is not considered drug paraphernalia is it? It has to demonstrated that it was used for that purpose it isn't the fact that it is a syringe right?

Ladd Erickson: Drug paraphernalia requires possession with intent to use so how you distinguish a pin hair from a piece of paraphernalia if I hollowed this out and snorted there would be residue that showed intent to use. Residue isn't the only mechanism. I would have to know whether the person admitted they were using it and other surrounding evidence. Now a days people get an analysis or a drug patch when they come to jail so you know if they are using or not.

Neutral: None

Dan Donlin, Chief of Police, Bismarck Police Dept: (See testimony #3)

Rep. K. Wallman: Section 1 subsection 2 is that law enforcement is mixed on it right?

Dan Donlin: Yes it would be moving that C felony to a Class A misdemeanor.

Rep. K. Wallman: That is because the class A misdemeanor doesn't include a referral for treatment?

Dan Donlin: The class A misdemeanor could have a treatment component if the judge desired to include that.

Rep. K. Wallman: The class A felony requires that?

Dan Donlin: I am not sure if it requires it.

Chairman K. Koppelman: You mentioned you are not testifying on behalf of any of these groups? Why is that?

Dan Donlin: I am also a member of the NDPLA legislative committee to see where we stand on this. I think the stand we have taken is a neutral thing.

Neutral:

Recessed the hearing.

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2030
3/10/2015
24584

- Subcommittee
 Conference Committee

Amanda Muscha

Minutes:

Chairman K. Koppelman: Reopened the hearing on SB 2030.

Aaron Burst, Association of Counties: Here is the position with the States Attorney: they have no problem with the marijuana which is subsection 3 or subsection 4. The engrossed version of subsection 4 we have no problem.

Chairman K. Koppelman: Mr. Erickson did say he supported that, but he did ask the question whether multiple conviction enhancements should be part of that.

Aaron Burst: We haven't discussed that. The States Attorney did not see a need to increase penalties for marijuana. Our position is that schedule 1 drugs still have to be felonies which are the problem with subsection 2 in the engrossed bill. If this were to pass it would also create the same problem we had with the B misdemeanor of marijuana. This doesn't change possession it only changes paraphernalia. If some had methamphetamine that would be a C felony but the paraphernalia would be A misdemeanor.

Rep. K. Wallman: If we took out subsection 2 that would take care of that problem?

Aaron Burst: Yes, but you would also have to take out the strikeout version. The current law is any paraphernalia is C felony and we do a carve out for marijuana. There is a possibility that we could do contraband A misdemeanor where you keep the schedule one drugs as C felony but there would be a catch all incase the prosecutor is convinced this person deserves another shot and they could basically amend to an A misdemeanor. We are fine with that but still think you should have the C felony on the law.

Rep. L. Klemin: Here we are talking about paraphernalia. There was a lot of discussion on the Commission in alternatives for paraphernalia. So what you are proposing would put us back into the position that we wanted to get out of.

Aaron Burst: I sat in those meetings and consistent with what I testified today that was our position then. The department of corrections and the state's attorney have a disagreement on who is going to the pen and why. The concept was we are putting too many people for

methamphetamine pipes paraphernalia into the pen. Our membership doesn't believe that. Those people will still find themselves in the pen.

Rep. Lois Delmore: Do you have any supporting information you can give us that show people with the felony and up that it has brought down the use?

Aaron Burst: What is the right drug policy? My group would suggest sending the public a message of reducing is not the way to do it.

Rep. Mary Johnson: Could there be some sort of compromise on 2; the second time you are caught with drug paraphernalia that would be a class C felony?

Aaron Burst: If you change the paraphernalia you may want to also consider the actual controlled substance too.

Rep. Mary Johnson: Wouldn't your savvy drug users just be sure it is clean?

Aaron Burst: If the bill passed and the paraphernalia is cleaned up then you are right, you would have just saved yourself from a c felony to an A misdemeanor. There is some nonuniformity in how this is sometimes charged. There are many people who suggest it doesn't matter what you do to the paraphilia because if there is meth in it you charge a controlled substance and you are at the C felony. If the committee wants to take that option essentially telling prosecutors you can still charge methamphetamine a C felony of you get scrapings off it it could be done.

Rep. Lois Delmore: I think as the bill is written and the other statue it allows you to do that right now.

Aaron Burst: Yes

Rep. Lois Delmore: This sounds like an internal problem. Your group was in on that and my recollection as a whole the group rode off on this and then Mr. Erickson did have some good points but the idea that it is more consistent now then it would be with this bill I am not buying that.

Aaron Burst: Just to be consistent we have always objected to changing any schedule 1, 2, or 3 paraphernalia. The marijuana we support. Larger drug control policy is what's in play.

Rep. Lois Delmore: Is there something we can do? Is there another way to word some of the other for the sake of consistency is there something we can do with the bill to meet some of those concerns?

Aaron Burst: I will see if we can offer some amendments and get there.

Rep. D. Larson: It seems to me that really what you are proposing is consistency.

Aaron Burst: Yes that is what I am trying to say. We don't want the legislature to say meth, schedule one drugs, paraphernalia are all A misdemeanors. We are suggesting the schedule drug and paraphernalia should be equal.

Rep. L. Klemin: I don't want us to lose site of the fact this whole thing deals with paraphernalia.

Aaron Burst: You are right. There should be distinction between the two and I can say we still think paraphernalia, schedule one should say C felony.

Chairman K. Koppelman: You pointed out there isn't really consistency in these cases. Is that something you discussed?

Aaron Burst: I can tell you we talk all the time. To make consistency is to write an air tight law.

Chairman K. Koppelman: You talked about sending a public message whether we are talking about marijuana or class one? It could be viewed either way if we modify penalties.

Aaron Burst: I think the public perception of marijuana is significantly is different than meth.

Mr. Bruce Burkett, ND Peace Officers Association: The bill does not have uniform acceptance by all the entities. The majority of law enforcement is OK with the way the C felony is there. The purpose of all these rules that you do and we enforce is intended to stop the behavior. Without some type of evaluation in changing behavior if a person has a pipe that has been used they are the ones that used it. So they are in possession of class 1 drug. The purpose of the judge and state attorney in handling the case is for doing the right thing for the right person.

Rep. Lois Delmore: Are we seeing the decrease in the number of users because of being tough on crime?

Bruce Burkett: I think if you track the age of behavior over time when the light comes on. If you don't have some ability when you get in court you need an evaluation which is up to the system.

Rep. D. Larson: You were just asked if these laws are showing a decrease. I will ask if from what you have heard if the legalization in Colorado has decreased the problems there.

Bruce Burkett: I don't know anything about Colorado other than it caused problems for the surrounding states.

Rep. L. Klemin: You are saying that the majority of your members believe that the people who manufacture and sell schedule one drugs and have in their possession the paraphernalia to do that would be treated the same as the people who use the schedule one drugs and may have paraphernalia in possession but not possession of the drug. The pushers and the users should be treated the same?

Bruce Burkett: No, I think that is the judge's job. When you take that away you take away the ability to help the person.

Chairman K. Koppelman: You are saying that the majority of people in your organization are supporting the bill and it does differentiate between those two?

Bruce Burkett: No we are supporting leaving class C felony of class one drugs

Rep. L. Klemin: You are saying the pusher and the user should be treated the same?

Bruce Burkett: That is up to the judge

Rep. L. Klemin: We are not talking about what judges do we are talking about what it provides.

Bruce Burkett: A person in possession of a meth pipe has to have been a user of meth and possessed it at some time. I don't see the connection different than that. Although on the sentencing side if you have someone that is manufacturing that the judge should be on the top end of the scale.

Rep. K. Wallman: One side is we are trying to come to one level statewide; but on the other hand you are saying that each individual person that comes before the courts will have a different history and as it stands the judge has the ability to direct the criminal in one way or the other. Am getting that right?

Bruce Burkett: The judge has the destination of that individual, but you can't be consistent with each. You can't do mandatory sentencing for each person.

Rep. Lois Delmore: We have heard that there are prosecutors that will scrape that out and so even if the pipe is in your possession you could go to jail? Correct?

Bruce Burkett: Yes

Chairman K. Koppelman: Mr. Erickson mentioned getting rid of the A misdemeanor charge for marijuana possession by a driver. Have you discussed that?

Aaron Burst: We have no problem with that.

Closed the hearing

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2030
3/31/2015
25635

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

Chairman K. Koppelman: Reopened the meeting on SB 2030. This is the drug paraphernalia bill.

Rep. D. Larson: One of the things I would propose that on page 1, removing section 2. It makes sense on the second page to reduce marijuana paraphernalia to the same offense as possession of the marijuana. On the first page it doesn't make sense to reduce the paraphernalia.

Rep. Lois Delmore: What they are saying is should a lab they must be in the same category as the paraphernalia that would be used?

Rep. D. Larson: There were people who testified who asked us not to include this part. If you are talking about schedule 1, 2, 3 drugs that should be felony drug no matter what part of it you are doing.

Chairman K. Koppelman: I did visit with John Bjornson yesterday. For marijuana paraphernalia if you have paraphernalia that is for use it is deemed for personal use then it is a Class B misdemeanor. If you are found with paraphernalia for marijuana growing operation or distribution then it would be a Class A misdemeanor under the bill. For things other than marijuana if you have for use it would be a Class A misdemeanor and if you have paraphernalia for growth or distribution it would be Class C felony. The section Rep. Larson is pointed out indicated that law enforcement had mixed reaction on it and that the state's attorneys are opposed to it.

Rep. Lois Delmore: It was one state's attorney who was not representing the other state's attorneys.

Rep. L. Klemin: I think certain states attorneys will be opposed to anything that makes it more difficult for them to get the biggest conviction they can. One of the reasons for this bill is overcrowding at the State Pen. That is one of the biggest reasons people are in the state pen. We are trying to decriminalize this somewhat to relieve pressure on the pen, but to not to make drug paraphernalia possession than having the drug.

Chairman K. Koppelman: They try to find their drug themselves. They try to see if they can scrap some out and then charge the actual drug crime versus the paraphernalia. If wasn't aware of that.

Rep. D. Larson: Donlin did say some chief thought it should remain a felony and others said if you leave it the way it is say that is what it is for a first offense. The other amendment that was talked about on page 2, to add marijuana by a driver in that so that is the same too. If we leave it this way at least amend section 2 to say for a first offense.

Chairman K. Koppelman: Rep. Johnson asked the question of whether there should be multiple conviction enhancement of the penalty which would relate to that first offense issue. Mr. Erickson had said get rid of an A misdemeanor for marijuana possession by a driver. I am not sure where that is in code?

Rep. L. Klemin: This bill does not address that. That is not the appropriate place to do that.

Made a motion to move an amendment by Rep. D. Larson: Seconded by Rep. K. Wallman: To add on line 19 before the period add for a first offense.

Rep. L. Klemin: Maybe there is something like that already in code. We need to check this out.

Rep. K. Wallman: I discussed with Mr. Burst the idea of a graduated penalty which is what this is. I am not sure this gets at the solution that we want.

Chairman K. Koppelman: I think if we can get at this we should be sure we have the amendment correct so we will just get it together later on this bill. We will discuss the graduated penalty as part of this motion.

Rep. L. Klemin: I can't vote for this amendment until I know the effects.

Recessed the meeting.

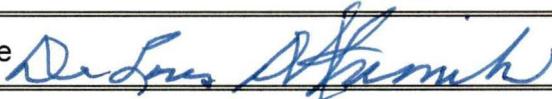
2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2030
4/1/2015
25696

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

Chairman K. Koppelman: reopened the meeting on SB2030. We had a couple questions so we postponed our action on it.

Tessa did research on this bill.

Chairman K. Koppelman: So the amendment that was originally made was to just add for the first offense after the penalty and it would have to be more extensive. We would have to spell out what happens after the second offense.

Chairman K. Koppelman: So after the misdemeanor on line 9 before the period it would say for the first offense and a Class C felony for any subsequent defense?

Rep. Larson withdrew the first motion and Rep. K. Wallman second was withdrawn.

Rep. D. Larson made a motion that before the period for a first offense and a Class C felony for any subsequent offense.

Motion made to move the amendment by Rep. D. Larson: Seconded by Rep. K. Wallman:

Chairman K. Koppelman: So we now have the revised amendment on the floor.

Discussion:

Rep. D. Larson: I like to have some consistency so that with those scheduled paraphernalia it would be on a second offense equal to the possession of the drug. This will keep it more consistent.

Chairman K. Koppelman: So the effect of this amendment would be that if you possess paraphernalia for drugs other than marijuana you would get the Class A misdemeanor as a charge on the first offense; anything subsequent to that it could go up to a Class C felony.

House Judiciary Committee
SB 2030
April 1, 2015
Page 2

Voice vote carries.

Do Pass As Amended Motion Made by Rep. Maragos; Seconded by Rep. K. Wallman:

Discussion: None

Roll Call Vote: 12 Yes 1 No 0 Absent Carrier: Rep. Kretschmar

15.0211.02001
Title.03000

Adopted by the Judiciary Committee

April 1, 2015

SJL
4/1/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2030

Page 1, line 19, after "misdemeanor" insert "for a first offense and a class C felony for any subsequent offense"

Renumber accordingly

Date: 4-1-15
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB2030**

House JUDICIARY Committee

- Subcommittee Conference Committee

Amendment LC# or Description: 15.0211.02001.03000

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Other Actions: Reconsider _____

Motion Made By Rep Larson Seconded By Rep Wallman

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

*VOICE
 VOTE
 CARRIED*

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 4-1-15
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB2030**

House JUDICIARY Committee

- Subcommittee Conference Committee

Amendment LC# or Description: 15.0 211.02001.03000

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Other Actions: Reconsider _____

Motion Made By Rep. Maragos Seconded By Rep. Wallman

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	✓		Rep. Pamela Anderson	✓	
Vice Chairman Karls	✓		Rep. Delmore		✓
Rep. Brabandt	✓		Rep. K. Wallman	✓	
Rep. Hawken	✓				
Rep. Mary Johnson	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. D. Larson	✓				
Rep. Maragos	✓				
Rep. Paur	✓				

Total (Yes) 12 No 1

Absent 0

Floor Assignment Rep. Kretschmar

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

REPORT OF STANDING COMMITTEE

SB 2030, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2030 was placed on the Sixth order on the calendar.

Page 1, line 19, after "misdemeanor" insert "for a first offense and a class C felony for any subsequent offense"

Renumber accordingly

2015 CONFERENCE COMMITTEE

SB 2030

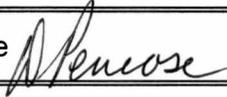
2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2030
4/10/2015
26019

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

Sen. Armstrong: Called SB 2030 to order. All members present.

Rep. Larson: That is partially correct. I didn't like reducing the penalty at all. I felt that this would be more acceptable. I did feel like the marijuana portion needed to be changed so I felt this was more acceptable than the way it just came over.

Rep. Kretschmar: I agree with Rep. Larson and like the amendment as well. That was the plan, to get the marijuana down but leave the more serious drug offenses up there.

Sen. Armstrong: I think we weren't talking about the marijuana part because it wasn't part of the amendments or part of the conference committee. I did hand out a proposed amendment. Understanding your position, I made it more inclusive, which seems weird, I like good policy; it says that out of state convictions will count to this and dealing charges and things of that nature will count to this. I think from a policy standpoint if you're going to go down that road, you want to make sure that you are treating the bad actors at least as equally bad as the addicts. This would incorporate all felony drug offenses from any state. I think it gives some clarity now from a criminal conviction standpoint it makes some sense too because on that first conviction if you have a companion felony case, you're not fighting about whether or not you are triggering that other misdemeanor case where you can see prosecutors and courts asking for that second criminal conviction because they want to make sure that they trigger the felony the next time. What you really get into with paraphernalia is whether or not there is enough of the substance available in the paraphernalia to get a conviction for possession charges. In order to charge paraphernalia you have to get crime lab samples that say that

the substance there is the charge. Sometimes there are very small amounts of the substances and it's very difficult to get an independent sample so a smarmy defense attorney might ask for an independent sample just in order to get it somewhere else. I think this is a step in the right direction.

Rep. Larson: I move that the House recede and adopt further amendments on 15.0211.02002, title .04000. (#1)

Sen. Luick: Second the motion.

6 YES 0 NO 0 ABSENT

HOUSE RECEDE FROM THEIR AMENDMENTS AND AMEND FURTHER.

CARRIER: Sen. Armstrong

CARRIER: Rep. Kretschmar

JJA
4-10-15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2030

That the House recede from its amendments as printed on page 1140 of the Senate Journal and pages 1283 and 1284 of the House Journal and that Engrossed Senate Bill No. 2030 be amended as follows:

Page 1, line 19, after the period insert "If a person previously has been convicted of an offense under this chapter, other than an offense related to marijuana, or an equivalent offense from another court in the United States, a violation of this subsection is a class C felony."

Renumber accordingly

Date: 4/10/2015
 Roll Call Vote #: 1

2015 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2030 as (re) engrossed

Senate Judiciary Committee

- Action Taken**
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Larson Seconded by: Sen. Luick

Senators	4/10			Yes	No		Representatives	4/10			Yes	No
<u>Sen. Armstrong</u>	✓			✓			<u>Reps. Kretschmar</u>	✓			✓	
<u>Luick</u>	✓			✓			<u>M. Larson</u>	✓			✓	
<u>Nelson</u>	✓			✓			<u>P. Anderson</u>	✓			✓	
Total Senate Vote							Total Rep. Vote					

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Sen. Armstrong House Carrier Rep. Kretschmar

LC Number 15.0211.02002 . 04000 of amendment

LC Number _____ of engrossment

Emergency clause added or deleted: _____

Statement of purpose of amendment: _____

REPORT OF CONFERENCE COMMITTEE

SB 2030, as engrossed: Your conference committee (Sens. Armstrong, Luick, Nelson and Reps. Kretschmar, Larson, Wallman) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 1283-1284, adopt amendments as follows, and place SB 2030 on the Seventh order:

That the House recede from its amendments as printed on page 1140 of the Senate Journal and pages 1283 and 1284 of the House Journal and that Engrossed Senate Bill No. 2030 be amended as follows:

Page 1, line 19, after the period insert "If a person previously has been convicted of an offense under this chapter, other than an offense related to marijuana, or an equivalent offense from another court in the United States, a violation of this subsection is a class C felony."

Renumber accordingly

Engrossed SB 2030 was placed on the Seventh order of business on the calendar.

2015 TESTIMONY

SB 2030

15.0211.01001
Title.

Prepared by the Legislative Council staff for
Representative Klemin

January 6, 2015

1/12/15 #1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2030

Page 1, line 9, after the eighth comma insert "or"

Page 1, line 14, remove the overstrike over "~~other than marijuana,~~"

Page 1, line 20, after "3." insert: "A person may not use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal marijuana in violation of chapter 19-03.1. Any person violating this subsection is guilty of a class A misdemeanor."

4."

Renumber accordingly

1/12/2015

251

Senate Bill 2030
Sixty-fourth Legislative Assembly
Testimony of Mike Reitan, Chief of Police, West Fargo Police Department

Good morning Chairman Hogue, Vice Chair Armstrong and members of the Judiciary Committee. My name is Mike Reitan and I am the Chief of Police of the West Fargo Police Department. I appear before you today in support of Senate Bill 2030.

I had participated in discussions during the interim on reclassifying marijuana paraphernalia from the current class A misdemeanor to a class B misdemeanor. During the course of conversation the suggestion was made that paraphernalia used to ingest other narcotics be reclassified from a class C felony to a class A misdemeanor. Several drafts of proposed bills were passed between various groups and with members of the Alternatives to Incarceration Committee. Senate Bill 2030 appears to match closely with one of the suggested versions.

Currently, a small amount of marijuana is handled within Municipal Court while the pipe used to smoke the marijuana is handled in District Court. This is inefficient as multiple court systems are involved in an offense which can best be addressed on the Municipal Court level.

Paraphernalia used to ingest narcotics presently carries a C felony charge. The felony record of a recovering user is counterproductive to their rehabilitation and treatment in that the person is not eligible for certain employment, housing or education benefits. To reclassify a user's paraphernalia possession to a class A misdemeanor I feel is reasonable.

I will note, however; that the current draft, as did the earlier circulated draft, does appear to me to reclassify the possession of paraphernalia used to produce marijuana from the current class A misdemeanor and makes that possession a class C felony. I am neutral on my position on this reclassification.

I have enclosed a copy of the final version of the draft that had been circulated in which marijuana production paraphernalia had remained a class A Misdemeanor.

I thank you for your time and stand for any questions you may have.

Michael D Reitan
Chief of Police, West Fargo

2030
1/12/15

#2-2

Sixty-fourth
Legislative Assembly
of North Dakota

A BILL for an Act to amend and reenact section 19-03.4-03 of the North Dakota Century Code, relating to drug paraphernalia; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.4-03 of the North Dakota Century Code is amended and reenacted as follows:

19-03.4-03. Unlawful possession of drug paraphernalia - Penalty.

1. A person may not use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, ~~inject, ingest, inhale, or otherwise introduce~~ into the human body a controlled substance in violation of chapter 19-03.1.
2. Any person violating this ~~section subsection~~ is guilty of a class C felony if the drug paraphernalia is used, or possessed with intent to be used, to manufacture, compound, convert, produce, process, prepare, test, ~~inject, ingest, inhale,~~ or analyze a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1. ~~Otherwise, a violation of this section is a class A misdemeanor.~~
3. A person may not use or possess with the intent to use drug paraphernalia to:
 - a. inject, ingest, inhale, or otherwise induce into the human body a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19 - 03.1.
 - b. plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, or contain marijuana in violation of chapter 19-03.1.
 - c. A person violating this subsection is guilty of a class A misdemeanor.
4. A person may not use or possess with the intent to use drug paraphernalia to ingest, inhale, or otherwise introduce into the human body marijuana in violation of chapter 19 - 03.1. A person violating this subsection is guilty of a class B misdemeanor.

Existing

19-03.4-03. Unlawful possession of drug paraphernalia - Penalty.

A person may not use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of chapter 19-03.1. Any person violating this section is guilty of a class C felony if the drug paraphernalia is used, or possessed with intent to be used, to manufacture, compound, convert, produce, process, prepare, test, inject, ingest, inhale, or analyze a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1. Otherwise, a violation of this section is a class A misdemeanor.

SENATE JUDICIARY COMMITTEE
SENATOR DAVID HOGUE, CHAIRMAN
JANUARY 12, 2015

PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY RE: SB 2030

My name is Pat Bohn and I am the Director for Transitional Planning Services for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify in support of Senate Bill 2030

What this bill does:

Changes possession of paraphernalia used to introduce the chemical into the body for schedule I, II & III drug paraphernalia (amphetamines, opiates, hallucinogens) used from a Class C Felony to a Class A Misdemeanor and possession of marijuana paraphernalia from a Class A Misdemeanor to a Class B Misdemeanor. It leaves paraphernalia used in the manufacture, growing or distribution of drugs a Class C Felony. It also leaves the manufacture of distribution of drug paraphernalia a Class C Felony.

Why:

We have to go to the roots of why our jails and prisons are full and we continue to build and that has to do with some of our laws we've enacted over the years to "ratchet things up" in hopes of reducing drug use. Our jails and prisons are heavily impacted by people who have drug problems. We've been fighting this so called "war on drugs" for decades and thus far our tactics to criminalize and incarcerate the drug users and addicts has failed. Incarcerating drug users has filled our jails and prisons and costs taxpayers billions of dollars with no end in sight if we don't rethink our strategy. We cannot incarcerate ourselves out of a public health problem. Crime and Punishment in American History written by Lawrence M. Friedman in 1994 really does a fantastic job of recounting the evolution of crime and criminal justice in America and did an incredible job of predicting what we are experiencing today.

Cass County: One day snapshot-drug paraphernalia (January 2014) was the #1 criminal charge (35). Burleigh County: One day snapshot-drug paraphernalia (January 2014) was the #1 criminal charge (82)

About 25% of the DOCR population is in prison for drug crimes which would include paraphernalia

Statewide Arrests(Attorney General Uniform Crime Report)

2011	1,384
2012	1,678
2013	1,707

We need to prioritize our jail and prison resources for people such as violent offenders or adults who sexually prey upon children, adults and the vulnerable. We also need to prioritize our criminal justice resources to focus on these violent offenders as well. Felony offenses require more prosecutorial and judicial time and can leave people in

jails longer awaiting disposition of their case. We do not have unlimited resources and most people do not really like seeing more and more of their tax dollars spent on corrections...they'd rather see it go into schools, addressing needs of the elderly, recreation, economic development and other things to improve quality of life for our citizens.

Solutions:

We are promoting the need to increase the availability of treatment in our communities for people in this state and reduce the utilization of incarceration to address the problem. Not only availability of treatment, but quality treatment too. We know that some treatment is ineffective at its best and at worst, can increase the risk of drug addicts to continue to use. Evidence-based treatment programs can reduce drug use but they must be administered well with quality assurance and program efficacy. We also must look to improve service delivery to address mental health. It is not uncommon for people with mental health issues to seek to self-medicate using illicit drugs and when caught they end up in our jails and prisons. Unintended consequences: people who have drug addiction issues and mental health problems—with drug use end up in our jails and prisons among criminals. Exposure to criminally minded individuals can result in increasing the likelihood that they will engage in other criminal activity. They also can be preyed upon by criminals.

Analogies to Use:

Medical—if you have cancer the Dr. determines a course of treatment based upon research. The Dr. typically doesn't say—well, if we ratchet up the amount of radiation or chemo from what the research says is the accepted dosage range we should get better results: wrong—you will end up harming the person more than helping them. Same thing goes with addressing drug use...locking people up, taking them away from their homes, families, mental health providers and jobs can actually make things worse by putting even more barriers or obstacles for that individual to overcome—kinda piling it on...

Other Initiatives:

There is no silver-bullet and we cannot change this course overnight – it will take time and this needs to be addressed from many angles and on many levels: A few things to mention that we are doing- We are promoting other initiatives to include reducing maximum lengths of probation for non-violent offenders, allowing the department to terminate probation early for non-violent offenders who are in substantial compliance with their probation conditions, 48 hour hold, pretrial services and placing assessment and correctional treatment services in county jails.

We also strongly believe in setting goals and measuring outcomes. The implementation of evidence-based practices is just good public policy as we need to make sure we are spending taxpayer dollars and policies and programs that work. If they work, we should look to replicate them, if they don't modify and reassess or terminate them....

In closing, the DOCR supports the passing of House Bill 2030.

January 12, 2015

Chairman Hogue, Members of the Senate Judiciary Committee:

My name is Dan Donlin, Chief of Police (Bismarck Police Department). I am in my 27th year of law enforcement. I am a member of the Chiefs of Police Association and a member on the Governor's Commission on Alternatives to Incarceration. I am not here on behalf of either of those entities, but rather, just want to give you information, which I hope aides you in your decision regarding SB 2030.

Two years ago I stood before you in opposition of this bill, mainly for the reason that I felt the level of offense for the paraphernalia should be at the same level of the drug, that only makes sense. After my involvement on the Commission on Alternatives to Incarceration I have adjusted by position, slightly. After looking at the numerous issues that came before the Commission, I, personally, thought that this was an area where a slight concession could be made and, therefore, I voted to move this bill proposal on from the Commission for legislative consideration.

I have not heard anyone in law enforcement state they are against Section 3, which reduces marijuana paraphernalia possession intended for personal use from an A Misdemeanor to a B Misdemeanor. It makes perfect sense to move it to the class of offense that simple possession of MJ is at. However, reducing felony paraphernalia possession for personal use has come with mixed opinions amongst law enforcement. Some I've spoken to agree with reduction to an A Misdemeanor, so long as evaluation and/or treatment are attached to the sentence; but others feel it should remain as is, a class C Felony. In discussions with the Chiefs Association members a proposal was thrown out about instituting a graduated penalty, i.e. A Misdemeanor for the first offense and then a C Felony thereafter. This may make it more palatable for law enforcement.

It's important that we aren't filling our jails/prisons with non-violent offenders who are in possession of paraphernalia and I am certain that is not happening in any case, as many times the paraphernalia is right alongside the drug itself or, as I'm told, judges aren't sentencing individuals to prison solely on a first time mere possession of felony paraphernalia. It is equally important that we hold drug offenders accountable and certainly ensure they receive treatment opportunities, which is another issue. Accessible treatment outside the prison system is very limited and from what I have been told, that which is available already has a long waiting list.

Thank you for your time and if you have any questions, I will try to answer them.

Thank you,

DAN DONLIN
Chief of Police
Bismarck Police Department

SB 2030
3-9-15
1.1

HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE KOPPELMAN, CHAIRMAN
MARCH 9, 2015

PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY RE: SB 2030

My name is Pat Bohn and I am the Director for Transitional Planning Services for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify in support of Senate Bill 2030

What this bill does:

The introduced bill originated from the Commission on Alternatives to Incarceration and changes possession of paraphernalia used to introduce the chemical into the body for schedule I, II & III drugs (amphetamines, opiates, hallucinogens) from a Class C Felony to a Class A Misdemeanor and possession of marijuana paraphernalia from a Class A Misdemeanor to a Class B Misdemeanor. It left paraphernalia used in the manufacture, growing or distribution of drugs a Class C Felony. It also left the manufacture of distribution of drug paraphernalia a Class C Felony. In the first engrossment a person possessing paraphernalia used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal marijuana is guilty of a class A misdemeanor.

Why:

We should explore the causal factors contributing to the continued growth in our jails and prisons. Some of it is connected to laws we've enacted over the years to "ratchet things up" in hopes of reducing drug use. Incarcerating drug users has filled our jails and prisons and costs taxpayers billions of dollars with no end in sight if we don't rethink our strategy. We cannot incarcerate ourselves out of a public health problem. Crime and Punishment in American History written by Lawrence M. Friedman in 1994 really does a fantastic job of recounting the evolution of crime and criminal justice in America and did an incredible job of predicting what we are experiencing today.

Cass County: One day snapshot-drug paraphernalia (January 2014) was the #1 criminal charge (35). Burleigh County: One day snapshot-drug paraphernalia (January 2014) was the #1 criminal charge (82). About 25% of the DOCR population is in prison for drug crimes which includes paraphernalia:

Statewide Arrests (Attorney General Uniform Crime Report)

2011	1,384
2012	1,678
2013	1,707

We need to prioritize our criminal justice resources and allocate efforts towards more violent and dangerous offenders. Felony offenses require more prosecutorial and judicial time and can leave people in jails longer awaiting disposition of their case.

Solutions:

In addition to drawing back the criminal penalties, we are promoting the need to increase the availability of treatment in our communities for people in this state and reduce the utilization of incarceration to address the problem. Not only availability of treatment, but quality treatment too. We know that some treatment is ineffective at best and at worst, can increase the risk of drug addicts to continue their usage. Evidence-based treatment programs can reduce drug use but they must be administered well with quality assurance and program efficacy. We also must look to improve service delivery to address mental health. It is not uncommon for people with mental health issues to seek to self-medicate using illicit drugs and when caught, they end up in our jails and prisons. Unintended consequences: People who have drug addiction issues and mental health problems end up in our jails and prisons among criminals. Lengthy repeated exposure to criminally minded individuals can result in increasing the likelihood that they will engage in other criminal activity. They also can be preyed upon by criminals.

Other Initiatives:

There isn't a silver-bullet and we cannot change this course overnight. It will take time and this needs to be addressed from many angles and on many levels: A few things to mention that we are doing: We are promoting other initiatives to include modify probation laws, 48 hour jail hold, pretrial services and placing assessment and correctional treatment services in county jails.

We also strongly believe in setting goals and measuring outcomes. The implementation of evidence-based practices is just good public policy as we need to make sure we are spending taxpayer dollars on policies and programs that are more effective. If they work, we should look to replicate them, if they don't, we should look to modify and reassess or terminate them.

In closing, the DOCR supports the passing of Senate Bill 2030.

Senate Bill 2030
Sixty-fourth Legislative Assembly
Testimony of Gerald Boyer, Lieutenant, West Fargo Police Department

#2
SB2030
3-9-15
2.1

Good morning Chairman Koppelman, Vice Chair Karls and members of the Judiciary Committee. My name is Gerald Boyer and I am a Lieutenant of the West Fargo Police Department. I appear before you today in support of Senate Bill 2030.

I had participated in discussions during the interim on reclassifying marijuana paraphernalia from the current class A misdemeanor to a class B misdemeanor. During the course of conversation the suggestion was made that paraphernalia used to ingest other narcotics be reclassified from a class C felony to a class A misdemeanor. Several drafts of proposed bills were passed between various groups and with members of the Alternatives to Incarceration Committee. Senate Bill 2030 currently appears to match closely with one of the versions of the suggested change.

Currently, a small amount of marijuana is handled within Municipal Court as a Class B Misdemeanor while the pipe used to smoke the marijuana is handled in District Court as a Class A Misdemeanor. This is inefficient as multiple court systems are involved in an offense which can best be addressed on the Municipal Court level. By moving devices used to ingest marijuana to the same classification as simple marijuana possession a single trial would effectively and efficiently resolve of the case.

Paraphernalia used to inhale or ingest narcotics presently carries a C Felony classification. A felony conviction can make a person ineligible for certain employment, housing or education benefits. Successful recovery and rehabilitation from an addiction is tied directly to housing, training, employment and treatment. The felony conviction for possession of paraphernalia used to ingest narcotics is counterproductive to the treatment of a recovering addict. To reclassify the illegal possession of paraphernalia used to inhale or ingest narcotics as class A misdemeanor I feel is reasonable.

The bill as written will not change in any way the current language of NDCC 19-03.4-03 relating to possession of paraphernalia used to manufacture and sell illegal drugs.

I thank you for your time and stand for any questions you may have.

Gerald Boyer
Lieutenant, West Fargo Police

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Sixty-fourth
Legislative Assembly
of North Dakota

A BILL for an Act to amend and reenact section 19-03.4-03 of the North Dakota Century Code, relating to drug paraphernalia; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.4-03 of the North Dakota Century Code is amended and reenacted as follows:

19-03.4-03. Unlawful possession of drug paraphernalia - Penalty.

1. A person may not use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, ~~inject, ingest, inhale, or otherwise introduce~~ into the human body a controlled substance in violation of chapter 19-03.1.
2. Any person violating this ~~section~~ subsection is guilty of a class C felony if the drug paraphernalia is used, or possessed with intent to be used, to manufacture, compound, convert, produce, process, prepare, test, ~~inject, ingest, inhale,~~ or analyze a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1. ~~Otherwise, a violation of this section is a class A misdemeanor.~~
3. A person may not use or possess with the intent to use drug paraphernalia to:
 - a. inject, ingest, inhale, or otherwise induce into the human body a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19 - 03.1.
 - b. plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, or contain marijuana in violation of chapter 19-03.1.
 - c. A person violating this subsection is guilty of a class A misdemeanor.
4. A person may not use or possess with the intent to use drug paraphernalia to ingest, inhale, or otherwise introduce into the human body marijuana in violation of chapter 19 - 03.1. A person violating this subsection is guilty of a class B misdemeanor.

Existing

19-03.4-03. Unlawful possession of drug paraphernalia - Penalty.

A person may not use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of chapter 19-03.1. Any person violating this section is guilty of a class C felony if the drug paraphernalia is used, or possessed with intent to be used, to manufacture, compound, convert, produce, process, prepare, test, inject, ingest, inhale, or analyze a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1. Otherwise, a violation of this section is a class A misdemeanor.

2

Bismarck Police Department

SB 2030
3-9-2015 #3
3.1

March 9, 2015

Chairman Koppelman, Members of the House Judiciary Committee:

My name is Dan Donlin, Chief of Police (Bismarck Police Department). I am in my 27th year of law enforcement. I am a member of the Chiefs of Police Association and a member on the Governor's Commission on Alternatives to Incarceration. I am not here on behalf of either of those entities, but rather, just want to give you information, which I hope aides you in your decision regarding SB 2030.

Two years ago I stood before you in opposition of this bill, mainly for the reason that I felt the level of offense for the paraphernalia should be at the same level of the drug, that only makes sense. After my involvement on the Commission on Alternatives to Incarceration I have adjusted by position, slightly. After looking at the numerous issues that came before the Commission, I, personally, thought that this was an area where a slight concession could be made and, therefore, I voted to move this bill proposal on from the Commission for legislative consideration.

I have not heard anyone in law enforcement state they are against what is now Section 4 in the current bill, which reduces marijuana paraphernalia possession intended for personal use from an A Misdemeanor to a B Misdemeanor. It makes perfect sense to move it to the class of offense that simple possession of MJ is at. However, reducing felony paraphernalia possession for personal use has come with mixed opinions amongst law enforcement. Some I've spoken to agree with reduction to an A Misdemeanor, so long as evaluation and/or treatment are attached to the sentence; but others feel it should remain as is, a class C Felony. In discussions with the Chiefs Association members a proposal was thrown out about instituting a graduated penalty, i.e. A Misdemeanor for the first and possibly second offense and then a C Felony thereafter. This may make it more palatable for law enforcement.

It's important that we aren't filling our jails/prisons with non-violent offenders who are in possession of paraphernalia only and I am certain that is not happening in any case, as many times the paraphernalia is right alongside the drug itself or, as I'm told, judges aren't sentencing individuals to prison solely on a first time mere possession of felony paraphernalia. It is equally important that we hold drug offenders accountable and certainly ensure they receive treatment opportunities, which is another issue. Accessible treatment outside the prison system is very limited and from what I have been told, that which is available already has a long waiting list.

Thank you for your time and if you have any questions, I will try to answer them.

Thank you,

DAN DONLIN
Chief of Police
Bismarck Police Department

Dan Donlin, Chief of Police

Phone: 701-223-1212 ★ FAX: 701-355-1927 ★ Tdd: 701-221-6820 ★ 700 S. Ninth Street ★ Bismarck, ND 58504-5899



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Title.

Prepared by the Legislative Council staff for
Senator Armstrong

April 8, 2015

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4/10/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2030

That the House recede from its amendments as printed on page 1140 of the Senate Journal and pages 1283 and 1284 of the House Journal and that Engrossed Senate Bill No. 2030 be amended as follows:

Page 1, line 19, after the period insert "If a person previously has been convicted of an offense under this chapter, other than an offense related to marijuana, or an equivalent offense from another court in the United States, a violation of this subsection is a class C felony."

Renumber accordingly