

2015 SENATE JUDICIARY

SB 2070

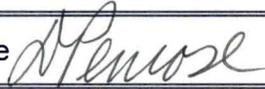
2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2070
1/13/2015
21893

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

1,2,3,4,5

Ch. Hogue: We will open the hearing on SB 2070.

Sen. Howard Anderson, Jr.: I am the prime sponsor of this bill (see attached #1).

Ch. Hogue: I had a question, on line 8 the intent of the bill is to provide criminal immunity. Did your group talk about civil immunity or was that not discussed.

Sen. Howard Anderson, Jr.: The civil immunity was not discussed. Of course, this is really an exemption for the laws that would be in place in the controlled substances act. Whether they need civil immunity or not, they aren't really administering anything. You will see that in the Naloxone provisions where that is a narcotic antagonist that we want to give people authority to administer. In that provision, there is immunity. Whether we would make someone immune for furnishing the drug or whatever else, that is not the intention here, I don't think we ever discussed that. My personal opinion is that it is not appropriate for this piece of legislation.

Sen. Luick: When you were talking about the maximum number of individuals, reducing it from five to three for an incident. What would happen if you were at a party and you have three or four individuals that are basically overdosed on something, maybe some bad drugs or whatever it is that considered one incident, so there are only three people trying to help these overdosed people. What happens if there are 10 people trying to help these overdosed people, or do only three people get immunity from prosecution. What happens then?

Sen. Howard Anderson, Jr.: I hadn't considered that where there are three or four people. I was thinking that there would be one person who is calling 911. I suppose it would be possible that there is more than one person who is passed out. I don't think the intention here is to give immunity to everybody at the party. The three people who call 911 stay at the scene, provide as much information as they can to law enforcement or EMS personnel about what the person might have taken and so forth. Those people get immunity. The other 25 people at the party they are probably gone already, but they don't have any

immunity if law enforcement can catch up with them. The intention is not to give immunity to all the people at the party.

Sen. Luick: Wouldn't that just basically entice those people to scatter and if there is help that is needed there, if there is something that they can do, you are thwarting their efforts to try and help those individuals, because if they know that only three are getting immunity, they will want to leave as soon as possible. Is there something we can put in the bill to say that if there are multiple cases, that more could get immunity?

Sen. Howard Anderson, Jr.: I guess, at this point, I would say let's start with this. Typically what happens at those parties as soon as law enforcement or the ambulance is coming, they scatter anyway? That's the problem usually, they are all gone and the person is still there. We are hoping that at least three of them will hang around to help.

Sen. Armstrong: The key is that they not only stay but that the emergency responders understand what type of drug was ingested. That can be incredibly critical in the early stages of treating the person, correct.

Sen. Howard Anderson, Jr.: Correct. We have had instances, for example, where people are dropped off at the emergency room and then they leave. Well, the emergency room doctor is left to guessing what they took. Are they drunk, do they have drugs in their system, whatever. The more information they have leads to a better outcome for the patient. They might have taken a multiple of different drugs and the person who brought them in may not know everything, but at least we have a start. That's the point.

Sen. Grabinger: I see the Steve's Law and I know they have done this in other states, is there data to show if it has been successful or looked at any problems that have arisen.

Sen. Howard Anderson, Jr.: I think we have some anecdotal stories that coalitions across the country seem to think that as the MN law says, the Good Samaritan laws save lives. I don't have a list of successes for you that I could show you.

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

Rep. Rick Becker: Sponsor. I support this bill. My argument for it would be similar to what I attempted to pass in the House last session. With the Good Samaritan laws that we have for alcohol offenses, I think there is a presumption that there is a great likelihood that lives will be saved with this type of law. If that holds for alcohol, it seems to me, then it should hold for drugs as well. In the first case, with the alcohol, the Good Samaritan, we also weigh the pros of saving a life against the cons of giving immunity to a criminal. We come out with the judgment that saving a life is more important than catching someone on an alcohol offense. If we apply that same sense of how we view things with drugs, this bill would say that it is more important to save a life than to be able to charge someone for a drug offense. I think that is true. On the very last line, line 17, section 19-03.1-23.1, it does exclude the more egregious offenses. For those who don't want to give particularly despicable drug dealers immunity, they would not have immunity with this bill as I understand it. I am looking for consistency in our rationale on how we apply these Good Samaritan laws.

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

Mike Reitan, Chief of Police, West Fargo Police Dept.: Support (see attached #2). As Sen. Anderson indicated this has circulated for the group and there have been various levels of support and there has been some concern in the law enforcement field with granting immunity to criminals. I believe the bill is focused on use, the provisions within the bill, as Rep. Becker indicated the most egregious drug offenses are off the table in this immunity. The prosecutors, of course, have the ability to determine who actually is going to be charged in the case, whether or not immunity is offered through this bill.

Sen. Luick: Approx. how many deaths are there in ND a year from overdoses?

Mike Reitan: I do not have that number. It's an interesting quandary we're in because of the protected information of medical records; we in law enforcement aren't able to know how many drug overdoses we're having in our communities; so to fully assess the problem, we can't get the information. Anecdotally, the number of calls that we have received at the West Fargo Police Dept within the last year related directly to heroin, which appears to be on the uptick as we get better control of the prescription medications. We've had one heroin overdose, but we've also had seven saves in West Fargo, where someone reported the situation, the ambulance arrived and appropriate treatment has been given. In fact, some of these people were at a point where officers were giving CPR when the ambulance arrived. The ambulance crew administered Naloxone and the individual came around to the point that they stood up and walked to the ambulance and were transported to the hospital. It's about making that call to save lives and get them appropriate treatment.

Ch. Hogue: It occurred to me that in order for this proposed law to be effective, the individuals who are in this situation and you want them to be motivated by immunity; they have to be aware of the immunity. Are there any mechanism or public announcements that are contemplated to get the message out that if you are in this situation, just know that you are entitled to immunity for reporting this? Otherwise the bill has no motivational effect.

Mike Reitan: You are correct. There will need to be some sort of campaign that will be launched by the Human Services dept. to inform people of the fact that there is this option available and some in law enforcement are concerned that as people become more aware of it, that it will be abused during drug raids, responding to house parties. Again, as Rep. Becker indicated we have to weigh the positive against the negatives; saving lives. We want to err on the side of saving lives.

Ch. Hogue: I know you are in favor of the bill, but the last paragraph of your prepared testimony causes me to think about the usefulness of this bill. You're not personally aware of anyone who sought immunity for alcohol poisoning or attempted to assert it in your career or since the alcohol poisoning bill has been on the books.

Mike Reitan: Since the alcohol poisoning has been on the books. I am not aware or been in a situation, nor am I aware of my department being involved with it. Whether it is an issue of education or people just choose not to do it but somebody said that if we can save one, then it's worth it.

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

Tyler Auck, private citizen: Support (see attached #3).

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

Dr. Melissa Henke, Medical Director, Heartview Foundation: Support (see attached #4).

Sen. Luick: When you get a call from somebody where there is someone unresponsive, how long does it take to determine if you don't have that assisted help from somebody who is at the party or with that person. What is the process in trying to find out what has happened to that individual?

Dr. Melissa Henke: Depending on the drug, there are physical signs and symptoms that you can look for when EMS arrives, or when the first responder arrives to determine if it is likely a stimulant, such as cocaine or meth, or opiates, or alcohol. In law enforcement, they know the signs and symptoms as well. In my training, I was told that when you come across someone who is unresponsive, you give them Naloxone and if it is opiates, they will get up and walk. If it is something else, then it takes much longer to determine that and then you just do the ABC's of airway, breathing, circulation, regardless of what the drug is. Opiate overdose follows a very specific pattern in every individual and it ends with termination of breathing. So if you find someone anywhere along that pathway, it depends on where they are in that state and how long it takes to identify it.

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

Bruce Burkett, ND Peace Officers Association: (see attached 5). I am not totally opposed to this bill, because something needs to be done to solve this problem. The problem we have is mostly with the immunity definition. When is somebody immune? Because for someone to be immune, they would have to stay there and provide assistance to law enforcement and aid in treatment or helping the individual. If a person conscious, he is staying there because he can't go anywhere, so is he entitled to immunity. Given the almost unlimited scenarios that can occur with those in the drug culture, we recommend changing the immunity for contacting law enforcement to consideration for the actual help provided by the contracted and mitigation of the outcome of the incident, and if he is responsible for the event. The state's attorney would have a duty to review the totality of the circumstances of the event and determine an appropriate offer of graduated immunity or consideration from full immunity or inclusion as a statute condition of the prosecution. There are numerous situations that we think that if an officer comes to the scene, or get called to a scene where this is going on and although they aren't unconscious themselves, there are people interrogated that are going to have to cooperate, to talk; be interviewed and if they aren't providing deceptive information to the officers, or they find drugs in the presence, they are going to get arrested and the immunity part is going to happen on the prosecution side once it gets to the state's attorney's desk. So the immunity impact to the officer at the scene won't be much at all, because he is going to have to deal with that. It's when it gets to the end result of whatever bill has the definition of immunity, it is going to the state's attorney's desk and defense attorney bringing that in and how it will impact the

case. That is the biggest concern, to determine the definition of immunity, because it is an element of the bill.

Ch. Hogue: Thank you. Further testimony in opposition. Neutral testimony. We will close the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee

Fort Lincoln Room, State Capitol

SB 2070
1/19/2015
22140

- Subcommittee
 Conference Committee

Committee Clerk Signature

Spencose

Minutes:

Ch. Hogue: We will open committee action on SB 2070. What are the committee's wishes?

Sen. Grabinger: I move a Do Pass.

Sen. Armstrong: Second.

Sen. Casper: I'm going to support the bill, but I have concerns about the practical operation. Let's say you have a house party, something happens, they know the cops are coming and they choose to use this law in a way that is not intended to be utilized. I visited with a number of law enforcement individuals and we had some testify here, they didn't share my concern.

Sen. C. Nelson: I found it interesting that law enforcement wasn't in agreement on this one. You have a chief of police coming in and saying safety is more important than criminalization and you get the police officers association coming in and saying differently. I am going to support the bill.

Sen. Grabinger: We had a similar bill last session that we went into conference committee on; the Senate held firm and the bill was killed over in the House due to some of the same concerns you share, that somebody might use this to get themselves out of trouble. The bottom line is the bill is intended to save lives. I look at it like this, in this particular case, we've seen where people have died because they were dropped off at the ER or people were scared to get them the help they needed because they might get into trouble, too so they took off and left the person. That's what we had in Grand Forks. We heard testimony on that last session from the family. To make the point, there might be a rare case where somebody tries to utilize that, but I don't

honestly think the criminals are that smart. If it saves one life, I think it is worth taking a look.

Sen. Luick: I feel the same way. The intelligence levels of what we are looking at here, they will screw up a second time. If somebody's life is on the line, they may not have that second chance.

Ch. Hogue: I thought the testimony of Tyler Auck was pretty compelling. The criminals who might be aware of something like this would be the ones who are repeat offenders, as drug addicts tend to be. He's the one that they were thinking about throwing him in the dumpster. It's a grizzly scene that gets played out between addicts I'm sure when somebody takes too much of their preferred drug or take something that they don't know what they've taken because it's not regulated. We'll see how it plays out in the House.

Sen. Armstrong: The more severe drug times are excluded from this. I agree with everyone, I think we might be over exaggerating the sophistication that goes on in these types of situations. The person you are probably going to help is the person who stayed around next to his best friend and has no idea that this law existed and stayed anyway. All the severe crimes are in here. If you are trying to manipulate the system, and the cops think you are trying to manipulate the system, you better not have one scale or one baggy, because those crimes are not excluded from this law. It is the primary use and possession crimes. I think that is a distinction between the bill last year and this one; this appears to be a little narrower in scope.

Sen. Casper: In a practical application, if the person has a marijuana pipe, there is residue in that. They get out of the fact that they have consumed it by staying around. The prosecutor could choose to prosecute on other items that were available or there at the time the police entered.

Sen. Armstrong: Yes, my understanding is if all there is is minor usage amounts and four people stand around, they will probably get immunity if somebody is overdosing. I guess the overdose would be on something other than marijuana; but if there is anything that looks like trafficking or large amounts of drugs, because possession with intent to sell, triggers on just the amount of drugs that are there. Even if you have a large amount of drugs, the possession with intent charges is not exempt from this.

6 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Sen. Grabinger

REPORT OF STANDING COMMITTEE

SB 2070: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2070 was placed on the
Eleventh order on the calendar.

2015 HOUSE JUDICIARY

SB 2070

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2070
3/10/2015
24586

- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to immunity from criminal liability for an individual who reports a medical emergency involving drugs.

Minutes:

Testimony #1, 2,3, 4

Chairman K. Koppelman: Opens hearing on SB 2070

Rep. Howard Anderson: (See testimony #1)

Chairman K. Koppelman: We had a bill similar to this last session, is this the same approach?

Rep. Anderson: This has been narrowed considerably. Last time the bill was in the alcohol statutes where we have a similar immunity for people who are drinking alcohol together and this has been placed in the controlled substances act which is 1903 which I think is more appropriate. Also when I send it out to law enforcements and prosecutors I actually had the first draft about a year ago and they had a chance to look at it and many of these suggestions that you see on the bottom are limiting to just these things came from the law enforcement and the prosecutors. Continued Testimony.

Rep. D. Larson: As you know when somebody takes someone who as overdosed to an emergency room law enforcement isn't called and so that is not some of the numbers that should be impacted. What we were kind of informed on in that bill from last time was that typically the reason that people don't call for help is not because of fear of prosecution but because they don't recognize that there is a problem so people think they will sleep it off. Are you aware of any specific times that somebody specifically didn't call law enforcement because they thought they would get into trouble so they were willing to just let them die for that?

Rep. Anderson: When we went through our coalition meeting of course we had medical personnel, ambulance personnel and so forth. They related many stories like those. Now in the senate side we had some very powerful testimony from and individual who said at one time he was left by a dumpster by his friends because they were afraid of being

prosecuted. He also said that he personally left one of his friend's unconscious because he was afraid of being prosecuted for ingesting of the drugs. Your case where you talked about the emergency room obviously when this individual is in the emergency room that person is a patient, however the people who brought them there are not. It is possible that law enforcement would talk to those individuals even though they don't talk to the patient who is inside the hospital. The idea here is that if they know they have the immunity hopefully they will call and tell what happened and won't just drop them off at the emergency room.

Rep. D. Larson: Last session on contacted both hospitals in Bismarck and they told me they never call law enforcement in situations like this. They also said they appreciate when someone lets them know what drug was ingested instead of just leaving them there, but it isn't the hospitals practice to notify law enforcement.

Rep. Anderson: We also have a case a supreme court case in North Dakota where a person was in the emergency room and the police had brought them in an a bag of marijuana had fallen out of their pants leg when they were putting him up on the table and the supreme court said they couldn't use that as evidence because it was part of patient confidential information. The point is here that we are not expecting the hospital to call law enforcement but those cases where people could have helped somebody by calling 911 and of course law enforcement gets the call and it will be recorded.

Rep. G. Paur: I would imagine that most parties where an overdose would occur there are probably multiple individuals, if one of the other users made a 911 call they would still be subject to prosecution because they have drugs or are under the influence or have paraphernalia or something like that wouldn't they?

Rep. Anderson: The intent here is up to three people, those who call and stay there until the ambulance gets there are immune from prosecution of ingestion of the same drugs that the other person might have ingested. They are not immune from selling it or manufacturing it but for ingesting it at the same party. What we hear usually is a party is going on and someone passes out and everybody scatters. Maybe if there is a 911 call everybody leaves because they know that law enforcement is going to be there and start taking names. The others are still going to scatter but those three people could stay and get immunity and help that individual.

Rep. L. Klemin: Looking at your list of statues page 1 line 1-10, section 19-03.1-23.1 is a section that we had another bill on in this committee about drug paraphernalia. Parts of this statute 19-03.403 deal with pushers and manufactures and dealers and part of it deals with users. Now in your immunity bill you have made the dealers and manufactures immune also not just the person who might have been at the place using. Was that your intent?

Rep. Anderson: No that is not the intent and certainly if there was a subsection I heard you talking about some subsections earlier that you wanted to narrow that down to, I don't think that would be a problem. This was the information that I got on my feedback from law enforcement and prosecutors that they could list this and maybe they should have listed it as a subsection as well but obviously somebody who happens to have their pipe in their

pocket might be immune from the prosecution from the paraphernalia. The intention here is to save someone's life who has overdosed.

Rep. L. Klemin: I understand the intention but it seems like we might be inadvertently giving immunity to people who are running meth labs.

Rep, Anderson: That is not the intention and of course if you wanted to put a subsection there in that that would be fine.

Rep. L. Klemin: The difficulty of putting a subsection in that is that subsection may not exist yet because it is only a bill not part of a law.

Rep. Mary Johnson: We are talking about what costs we are willing to assume to save somebody's life might be a cost but it is a cost of saving a life. I would be willing to assume that cost to save a life. I think by leaving it out undermines your bill as it were. Do you see that as well?

Rep. Anderson: I think the instance where somebody had paraphernalia connected with this would probably be a fairly small percentage of them. So I don't see a down side in taking that out. If someone happened to have some paraphernalia well I don't see a problem with taking that out and if law enforcement wants to prosecute them for paraphernalia that's fine. Most people at these parties are not going to be in the paraphernalia business. I don't see that as a problem and I don't think that is going to under mind the bill significantly.

Tyler Auck: (See testimony #2)

Dr. Melissa Henke ~ Director of Heartview Foundation: (See Testimony #3)

Rep. L. Klemin: So if we pass this bill here how do you get the message out so that people know that they would be immune from prosecution for reporting and overdose.

Dr. Henke: It is going to require a lot of education. I think we under utilize our 12 step programs. Our AA and NA community they can be vital in getting the word out that we have to do the right thing. We have to tell our kids in school that they don't need to be afraid of law enforcement they are there to help them and to save their lives and their friend's lives. It's a lot of word of mouth but we need a concerted effort at the state level to educate people. We need to educate on what does an overdose look like, if you are at a party you don't know if someone is passed out or if they are actually dying. So we educate on what that would look like, what to do to prevent it and what help is available if they call 911 and stay and provide useful information.

Crystal Aspik, Heartview Foundation: presented the testimony. (See testimony #4)

Rep. D. Larson: I do want to make it very clear that I do care about saving lives as much as anybody. I should also say that I was one of the main ones that fought against this in the last session and the reason that I did was because I was concerned about saving lives because I felt that those very people that are out there giving people drugs, especially we

were talking about synthetics and those people who are knowingly distribute those synthetics knowing that people around the country were dying from them those and still sold them. My worry was this would embolden them even more to try more experimental things and it would put more lives at risk. So my reason for asking these kinds of questions is to try to determine which way really is going to save life. What is really going to be the thing that will be more effective in saving people from an overdose death? Are you aware that since we have had in law for some time that juveniles can have immunity from prosecution on an alcohol overdose and yet kids are still dying of alcohol overdoses. Are you aware of any situations where people have called and used that immunity and therefore saved someone's life rather than letting them sleep it off?

Crystal: I am not aware of any specific stories in that case and my primary role at the Heartview Foundation is working with family members and with adults who are struggling with addiction. In terms of adolescent usage and numbers I am not. We do need to figure out how we can get the word out.

Rep. Lois Delmore: You have a reference to a drug that is used immediately, is that in a separate bill?

Crystal: That is in a separate bill.

Neutral: None

Opposition:

Bruce Berkutt, ND Peace Officers Association: We think the need is there to do something to solve this issue. But in order for law enforcement to respond the way the bill is drafted it is important to be specific as to what it is and how do you earn it and who gives the immunity. When a cop gets the scene they need to handle what they see. Similar to what we did before when the bill came up in the senate the peace officers committee read the bill through and the initial reaction was "whoa". This isn't right. If you listen to the language its pretty broad and we can see issues happing on every call. You want to have something like that in law but make is specific in how in fact you obtain immunity. We did draft it and if you go to the bill on lines 6 or 7 to where it says to receive immunity under the section, we wrote that to a point where we thought it would work. If there are drugs when law enforcement shows up they are going to take and secure it and somebody down the road is going to have to sort out what had actually happened and to cooperate with law enforcement the officer is going to interview people. Anybody that is there is going to be a pile of investigation that happens after the fact. So the way we read the bill as it says in the engrossed bill we wanted to make it so the immunity is clear and cut. As a group the law enforcement side in providing it, doing it right so it fits in and makes sense to law enforcement it would be like we prefer. We want something to happen that is effective not wide open.

Rep. L. Klemin: I am wondering how the people who would do this reporting would react when we have a bill in here with stringent conditions? The way you are discussing it you would have to be arrested and then the state's attorney would determine whether to charge them later.

Bruce Berkutt: The responding officers are not the ones who give immunity and they have to react right away. Really the point is that if it wasn't a really drug overdose they wouldn't qualify for immunity so we aren't going to let the evidence disappear and so we are going to secure the scene and if multiple people that are there we are going to interview them. Hopefully an officer will be on that ambulance if there is an issue and so he will be getting information as they are going. Whatever the immunity is we want to make it clear cut and not confusing to who is going to provide the immunity or where it comes from.

Rep. L. Klemin: Do I understand the amendment you read was not adopted by the Senate?

Bruce Berkutt: No, I testified on this bill in the senate, the first person to testify for the bill was a police chief. The committee that he was not on was the one that wanted to make it more clear cut. If you look at all of the exemptions it does allow for possession and I think one of the sections in there is even possession within 1000 feet of a school. It's the possession of actual drugs at the scene that is going to get the officers attention when they get there. If it is just ingestion we don't know what it is.

Rep. L. Klemin: My question is did you propose the same amendment in the senate?

Bruce Berkutt: I did not.

Rep. L. Klemin: Would you give the proposed amendment to the clerk?

Bruce Berkutt: Yes I will.

Rep. G. Paur: If a person called 911 they would ask what the problem was, would the 911 also send the police?

Bruce Berkutt: I think in Bismarck the fire department goes after the ambulance

Rep. G. Paur: If someone calls 911 and tells the dispatcher that there has been a drug overdose and to send an ambulance would the dispatcher also send the police?

Bruce Berkutt: A lot of times in bigger cities like Bismarck the fire department goes after the ambulance and the police department, if there has been a potential problem or violation sometimes are not included in that first call. In rural areas like Devils Lake, everybody heard the call and once that word gets out you get lots of people responding in addition to the ambulance.

Rep. P. Anderson: You said that the police wouldn't be called if there wasn't a reason to suspect, but if it is a drug overdose wouldn't there be reasonable suspicion? So you can assume the police would be showing up with the ambulance?

Bruce Berkutt: Probably.

Rep. P. Anderson: So the Peace Officers Association, are you saying 100 percent are opposed to this bill?

Bruce Berkutt: No. Our full committee when they heard this bill they would prefer a more concise definition of what immunity is and how do you get it.

Rep. P. Anderson: Who is this committee?

Bruce Berkutt: The Sheriffs association, police association, BCI and all the other state law enforcement entities. They are all a part of this committee and make up NDPOA (North Dakota Police Officers Association).

Vice Chairman Karls: Once the 911 call is made can you envision everyone would scatter but who are with the victim?

Bruce Berkutt: I would say that there is a good chance that that will happen. Those individuals that would stay, this bill would reward that.

Rep. D. Larson: Since we have had the immunity for alcohol overdose when anyone has ever called 911 for the alcohol immunity is that what you have heard has happened with that?

Bruce Berkutt: Yes, the Chief of Police Donlin had testified in favor of this bill in the Senate and he was asked that question by the chairman. They wanted to know the number of times in the last two years that anybody has given immunity for alcohol. His answer, which is on the record, was none to his knowledge.

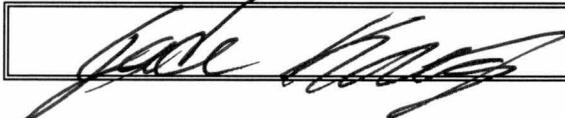
Hearing closed.

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2070
3/11/2015
24661

- Subcommittee
 Conference Committee



Minutes:

Proposed amendment #1

Chairman K. Koppelman: Reopened the meeting on SB 2070.

Rep. D. Larson: (proposed amendment #1) I move the amendment.

Rep. Lois Delmore: If I had not been using and the Chairman I think is overdosing and I stay and call the police, I haven't done any part of it but I might be really afraid of the police blaming me. This puts one more layer between doing that and the other when I may not need an evaluation.

Chairman K. Koppelman: Let's get a second before we discuss it. I asked the same question that you just asked Representative Delmore, earlier this morning. Which group was it Tessa that you mentioned?

Not Audible

Chairman K. Koppelman: I don't know if it solves it or not. Whether it is the amended bill or the bill as we have it I think we still have the dilemma of some people not knowing we had done this number one and still having the same fear.

Rep. D. Larson: The evaluation is for an individual that has done a drug overdose.

Tabled the proposed amendment for later.

Rep. L. Klemin: I have a problem with this whole amendment as it is phrased but I think the part about the state's attorney is good because the police or whoever comes on the scene is not the party determining immunity so I think this bill could be amended very simply by saying that on line 12 to receive immunity under this section add the words "the state's attorney must find that" then on 13 " the individual receiving immunity must have" and so forth.

Chairman K. Koppelman: Maybe one of you can work with Tessa on clarifying that for the amendment and then we will come back to this.

Rep. P. Anderson: Let's say someone is at a place where they make meth and everyone goes away including the people making the meth but there are still a couple people stayed there and called. I still think the people that called, whether they called from the meth lab or not should be given immunity.

Rep. G. Paur: I'm heading in just the opposite direction. I think we should give broad immunity like Representative Johnson said earlier we are saving a life. If there is a meth lab there it is going to be confiscated or destroyed, the people who are probably responsible for the lab have been taken off but if we can save a life. If we start making it to be in this instance you are immune and in this instance you are not it is going to get so confusing that people are not going to use it. It will be a worthless bill.

Chairman K. Koppelman: We will come back to this.

Hearing closed

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2070
3/31/2015
25640

- Subcommittee
 Conference Committee

Committee Clerk Signature



Immunity for criminal liability for an individual who reports a medical emergency involving drugs.

Minutes:

Proposed amendment #1

Chairman K Koppelman: Opens the work session SB 2070.

Representative D Larson: (See proposed amendment #1) Those of you that were here last session may remember that we had a bill that was substantially similar to this and we defeated it. My biggest reason for defeating it, I was fearful of those people selling synthetic drugs that would be the very people that would take advantage of this and use it for their purposes. This would actually put more people at risk.

Chairman K. Koppelman: Would you describe how they might misuse it?

Representative D Larson: We know that some of these people, for example, "Big Willie's", sell terrible drugs that are illegal and kill people. They know full well the dangers of the drugs they are selling and sell them anyway. As these new designer drugs come out, they are willing to try new things on people. My worry was that those are the very kinds of people that would go ahead and try something experimental and if there was a problem, all they would have to do is call 911 and they would be immune. My worry was that they would have a "get out of jail" free card.

Also, there was a concern that people would go ahead and use some of these drugs, see police coming up to the door and would pretend that they were having problems. Those are the reasons for my amendment and this would specify specifically what it's doing. It doesn't require valuations and other stuff, it does say who it is specifically and that they are immune because it can't be up to an officer to just do that.

However, they still often use that discretion and simply not charge somebody with something and they are still able to do that. If it's something that is going to be asked by the person who might be arrested, then the state's attorney can say yes, you called 911, you absolutely fit within this. On the other hand, if they have overdosed, then people should feel free to call 911 and know this person really does need some help. With these amendments, I would be able to support this bill this year.

Representative D Larson: I move those amendments.

Chairman K. Koppelman: One grammatical suggestion on the amendment, you may also want to add on line 13, the words "must have" be removed. As I read it (inaudible). I like this bill now. It tries to deal with the issue and minimize the unintentional (inaudible).

Chairman K. Koppelman: Is there a second?

Representative Wallman: Seconded.

Chairman K. Koppelman: Is there discussion? I personally like the amendment and I was one who voted against this idea a couple of years ago. The reasons that Representative Larson stated are probably why the bill failed. This is a narrower bill and I like the fact that it tries to deal with the issue and minimize the unintended consequences.

Representative Lois Delmore: Have you talked to the States Attorney's about the amendment you put on to see how they feel about being in charge of making those decisions? Maybe they do already because if it's brought to them, they are going to have to do the charging out.

Representative D Larson: No, I have not talked to them; this was a modification of the amendment that Bruce Berkutt wanted from the North Dakota Police Officer's Association.

Chairman K Koppelman: Did this amendment have that provision?

Representative D Larson: Yes.

Chairman K Koppelman: The States Attorney's does have prosecutorial discretion and they are the ones that decide whether they charge or not. They are the gate keepers for immunity saying this is a put up job or a serious situation.

Representative Paur: Representative Larson's amendments, the people would be arrested and the state's attorney would determine if they should be released or not?

Representative D Larson: They may or may not be, there would be a police report written, not everybody is immediately arrested or charged. Police officers use their discretion. To clarify, the way sentence would read with the amendments, "to receive immunity under this section, the State's Attorney must find that the individual receiving immunity remained on the scene until assistance arrived and cooperate with emergency medical services and law enforcement personnel. The medical treatment of the reported drug overdosed individual and it was determined to have been in need of emergency medical services". So that would take care of somebody that's just faking it to get out of a charge.

Chairman K Koppelman: The other issue is immunity is immunity from prosecution not necessarily immunity from arrest in any event.

Representative Klemin: Procedurally, what does the State's Attorney must do to find that all of these are happening? You must find that they remained on the scene, cooperated and the person must actually require emergency medical services, so there is three things that the State's Attorney going to have to find that. How does he officially find that for the purpose of this section?

Representative Larson: I don't know what the procedure is? Somebody along the line has to make that determination. I don't think that anyone wants it to be up to the determination of the police officer and they didn't want to have to even be a court record where it has to be the determination of a judge. That's why it was with the State's Attorney whether they were going to charge it or not. You are much more familiar with the legal process than I am but it seemed to be the most efficient way to do it.

Representative Paur: Whether they are arrested or not, these officers takes their name down and says we will notify you whether you are going to be charged with drug offences. That type of logic in this bill, we might just suggest a Do Not Pass and kill it. I think the immunity thing is gone.

Representative Wallman: During the conversation the big issue was "who's the gatekeeper of the immunity"? Are the police going to walk in and everybody is off the hook or are they going to be arrested and the police officers have to take a very detailed accounting of what happened and recommend immunity for the people who cooperated, recommend that to the State's Attorney, provide the information and then the people who cooperated would have immunity. It seems to me that the only legal way to do it unless we want to grant police officers with the authority to give immunity. This only serves the purpose that there is a public awareness campaign so that young people will know that if they cooperate, eventually they could be immune. That would be the incentive and not let people die of overdose.

Chairman K. Koppelman: As I read the amendment, I'm leaning towards supporting it because I understand the intent. The only question, the language that says the individual was determined to have been, makes the immunity hinge upon a medical finding after the fact. I wondering if it might be wiser to say something like "the overdosed individual was reasonable believed to have been in need of emergency medical services. If this is a complete sham, then immunity doesn't apply. If you think something is wrong and the EMT's arrive and it turns out that they are OK, I wondering if it's a softer way. Otherwise the State's Attorney is going to make a determination based upon the medical treatment. I'm thinking maybe if we were to change instead of saying "was determined" to say "was reasonable believed to have been in need of emergency medical services". Then it's the reasonable legal person standard. That's something the State's Attorney and judge on the base of the facts.

Representative Klemin: If you do it the way you propose than we are shifting this from a medical determination to what was in the mind of the person who was on drugs who thought about the other person.

Chairman K Koppelman: They may or may not have been on drugs, I'm saying the person making the call because we are dealing with the immunity.

Representative Klemin: So that person, we are shifting it from an actual medical determination to whether the person did need medical services to whether the person making the call reasonably believed that they did need medical services. I think that is going to be very difficult to establish. The medical part is going to show us or not but getting into the mind of the person that called is going to be difficult.

Chairman K Koppelman: I'm thinking reasonable person standard because what we are trying to get at is giving people some insurance that if they make the call they will call 911. That would be enough to give them immunity. If we do the medical, I can see people getting caught in the situation of saying, well, you made this call and thought needed, and then the EMT arrived and deemed no overdose. Therefore, you were using drugs too, so you are going to be charged. I can see your point Representative Klemin, but it's a nuance that we can talk about. Plus, we may have this in conference committee.

Representative Wallman: I was reading the testimony from Dr Henke who works as medical director of the Heartview Foundation; she said that she had faith in our law enforcement and the emergency medical personnel that they would be able to determine if an actual overdose has taken place. As I read this, the spirit of her testimony, it would be law enforcement that would decide if they were going to haul someone in or not, who calls.

Representative Klemin: That was the concern of Mr Berkutt from the North Dakota Police Officer's Association, saying police don't give immunity but he said that the State's Attorney may make that determination.

Representative Larson: There was enough evidence to charge and then the State's Attorney would have to determine if they were immune from that prosecution or not.

Chairman K Koppelman: There really are two levels. Law enforcement is not in a position to give immunity but they are in a position to use some judgment to determine if they are going to arrest someone or not. They arrive on the scene and look at the situation and say, this is clearly someone in trouble, 911 was called in good faith, go get sober, I'm not going to arrest you. They would have some judgment there but ultimately the State's Attorney under your amendment would be the one who would make the final decision. We will take a voice vote on the Representative Larson amendment.

Voice vote-motion carried.

Representative Klemin: I would like to propose another amendment, on line 10, remove section 19, which is the drug paraphernalia bill on SB 2030. I questioned the sponsor about that bill and he indicated in his testimony, that it would be OK to delete that from this bill.

Chairman K Koppelman: What is your reasoning?

Representative Klemin: It's the paraphernalia one; this is dealing with drugs on the scene. I don't know if that should be taken out and let SB 2030 deal with that?

Chairman K Koopelman: The point of this bill is to give people some assurance that they are not going to be prosecuted if they call 911. They are not going to be prosecuted for using drugs because they called 911 because the immunity holds but there is a pipe in the corner and they will be prosecuted for having paraphernalia.

Representative Klemin: You convinced me to not make the further amend.

Chairman K Koppelman: What are the wishes of the committee?

Representative Larson: Moves a Do Pass as Amended.

Representative Wallman: Seconded.

Representative K Koppelman: I'm going to support the motion. I originally voted against the bill but I think we improved the bill and the intent is good.

Representative Klemin: I think regardless of how this works for the situations that were given, those people weren't thinking they were going to get caught themselves.

Representative Delmore: This is something that has gone nationwide and it's more of a college campus bill where they can do the awareness and education. I supported this bill last time and I'll support it again.

Representative Paur: I going to support the bill also but I don't think it will do any good or harm.

Roll call was taken on SB 2070, for a Do Pass as Amended with 13 yes, 0 no, 0 absent and Representative Larson will carry the bill.

March 31, 2015

SK
3/31/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2070

Page 1, line 12, after the underscored comma insert "the state's attorney must find that"

Page 1, line 13, remove "must have"

Page 1, line 15, after "individual" insert "and that the overdosed individual was determined to have been in need of emergency medical services"

Renumber accordingly

Date: 3-31-15
 Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2070

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: Rep. Larson #1

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					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 3-31-15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 5B2070

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

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	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Larson

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

REPORT OF STANDING COMMITTEE

SB 2070: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2070 was placed on the Sixth order on the calendar.

Page 1, line 12, after the underscored comma insert "the state's attorney must find that"

Page 1, line 13, remove "must have"

Page 1, line 15, after "individual" insert "and that the overdosed individual was determined to have been in need of emergency medical services"

Renumber accordingly

2015 CONFERENCE COMMITTEE

SB 2070

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2070
4/8/2015
25933

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

Sen. Armstrong: Called meeting to order, all members present. Rep. Larson can you briefly explain the two amendments from the original bill.

Rep. Larson: On the marked up version of the bill, we said that the state's attorney must find that the individual who received the immunity remained on the scene. In order to receive this immunity the state's attorney must find the reason that we did that was because we didn't want the officers being the ones to determine whether there is immunity or not. So that's why we put that portion in there to have it be clear that it's not just the officer that makes that determination. In speaking with Sen. Armstrong, he pointed it out that we also need to put in there about a judge, which I hadn't thought of, none of us would oppose that either. We're just thinking it wouldn't be the officer. Then the next part of the amendment, on line 16 is a result of there being a fear from some that there might be people that would fake something like this just to get out of any kind of consequences. We put in there that the overdosed individual was determined to have been in need of emergency medical services. It just wasn't something that they saw the cops coming up the street and they call 911 and say "I'm immune". That was the reasoning for this. I did speak about both of these amendments with the bill sponsor, Sen. Anderson, was fine with them.

Sen. Luick: The first change you made, do we have to worry about a time scenario. How much time would it take for a state's attorney to determine that issue?

Sen. Armstrong: I can address that. I think that the Senate is completely comfortable with the second amendment. I think we are completely with the sentiment of the state's attorney amendment. I looked in other jurisdictions

that have more of it, and we have it in our Code regarding immunity. Immunity is a legal term of art. I understand that you don't want the officers to make the determination, but here is how I see this happening on the scene. The officer will show up, somebody has medical attention. There were three people waiting around to call the cops; one of them may have called the cops, 2 of them are sitting there. He's going to say either he's going to arrest all of them or none of them. It's going to go to the prosecutor's desk and the prosecutor is going to know that this statute is there. He's going to say well, I'm not going to charge this person; we're going to let him go because they have immunity but I'm going to charge the other two. That could happen. They might only charge the one who called the cops. Or might let all three go for waiting around. That's the prosecutorial discretion. The reason I say that is because the cop can never charge anyone. The prosecutor still could long-form complaint them two days later. Say they find out the person was faking and when the cop gets there he believes what they are telling him. Two days later, after something comes out, the prosecutor understands that everybody was faking. The fact that no one was arrested and the cops determined not to arrest them means almost nothing. The state's attorney can still bring action against them. The third tier to this is where the prosecutor might charge someone and the defendant wants to argue for immunity in court. I think that's the unintended consequence of the language that you put in there; that you are now making the state's attorney have the final decision of a legal term of art, which is community. That's what we're not comfortable with, because in all other areas of immunity it is an affirmative defense. You can argue it in court. If you can't come to an agreement it goes forward. No one wants the officers to determine who is and isn't to be charged. We want the state's attorney to use the proper discretion and then have an avenue if there is a dispute to move forward with the court. I think the simplest fix would be just to leave the top part the way it was because I think that's how immunity is treated everywhere else in the code. When the word "immunity" is used, it's just used. The reason is that it is a legal term of art. If you're not comfortable with that, then we really have to tighten it up to the point of making sure that the prosecutor doesn't grant immunity that you can go to the neutral arbitrator of fact, which would be the judge or jury on the back end. You seem to be worried on the front end with law enforcement. I'm worried about if there is a dispute moving forward.

Rep. Larson: I don't necessarily disagree with you. I feel that these amendments were actually shortened from what was requested by the Peace Officers Association. They wanted to clarify who it was, that it wasn't them to make the determination. I thought that was reasonable. They do already use

police discretion at the scene and many times don't arrest anybody; especially if there are legitimate concerns. They wanted to make sure that it was the next person that decides whether to bring a case forward or not. I would like to leave this in, but if you would like to spell out then the whole process, that it's open to the judge after that, there wouldn't be a problem with that.

Rep. Wallman: On line 12, to receive immunity under this section, the individual receiving immunity must have remained on the scene. Are you saying that when it says receiving immunity, there is a process in place for how that would be determined and it wouldn't have anything to do with law enforcement. It would be that they got arrested or didn't get arrested. There is already a process in place, when it says receiving immunity.

Sen. Armstrong: Immunity is a legal term of art. It is determined. I know what the Peace Officers' concern is; they can't grant or deny immunity anywhere else in the code. They are the on-scene people and nobody expects them to make the final determination. They expect them to deal with what is going on on-scene. They aren't going to get in trouble if they arrest someone who has immunity and they aren't going to get in trouble other than with their local state's attorney and how they interact on the hierarchy if they let people go. The determination as to whether to charge somebody is never a police officer's determination. It's always a state's attorney's determination. Regardless of how you write this, unless you write it this way, the only thing you are doing with this language, is cutting the judge and the jury out of it. I think because we don't use it very often that they have some heartburn over it. I think their concern is misplaced. They don't have the option to grant immunity. If this bill passes in its current form, they don't have the option of granting immunity or not granting it now. That decision is made by a state's attorney in determining whether to charge somebody or not to charge somebody. Then if there is a dispute about it, that would be between the defense and the state's attorney to argue in front of a judge. So we could spell it out. If we would go down that road, especially because we don't have an amendment drafted now, I would prefer it to be as simple as possible. I am comfortable that immunity means immunity means because it means it for us as legislators, we have it. The cops don't determine if we have immunity if someone wants to come after us for something, that immunity is a legal protection. We have immunity from civil liability in the criminal code in the affirmative defense, we have immunity from civil liability and how that is written in the criminal code is that you have immunity. Again the officers aren't the final purveyor of whether or not charges are made. The language in the first part fully protects them the same way if we add the internal language.

They are going to err on the side what they think is right that night. That's what they should do.

Rep. Larson: I think that they were thinking about is that it would be, if it wasn't spelled out for them that the officers would have to just blanket say, I guess you are immune so I'm not doing anything. They wanted more to the amendment on the other part that they wanted us to put in, which we didn't was the person who had overdosed would also need to complete a drug evaluation after the event. We decided not to mess the law up with that portion of their request. They wanted to make sure if someone is out there overdosing, that they want to make sure that they are taking care of their addiction problem. We didn't put that amendment in. The police thought they were granting the immunity and didn't want that responsibility.

Sen. Armstrong: Who were you talking to from the Peace Officers Association?

Rep. Larson: Bruce Burkett and Chief Donlin. Bruce Burkett is the one that was actually representing the Peace Officers.

Sen. Armstrong: I don't know how to craft the language because it would just be defining the rules of criminal procedure. Immunity cannot be granted by an officer. He can determine whether to arrest or not arrest a person. That's still not the final say as to whether or not immunity is granted. He cannot arrest, if I am waiting by the phone and Sen. Sen. Luick overdoses, he can determine not to arrest me, but the prosecutor can still charge me two days later.

Rep. Wallman: I am more concerned, with all the research I've done on this issue, says that unless you have a really well-funded campaign to let people know that this law exists, it doesn't actually prevent people from fleeing a scene or not calling. The other issue that I have is that a lot of the states are now actually giving the drug that prevents overdose to officers to have in the field so that they get called and go out and administer this medicine there, then of course, there are lots of laws that say they can't be liable, etc. Two of the missing pieces, with the states that are far ahead of us on this issue, are doing we're not addressing. While I think it is an admirable bill, that 911 Good Samaritan laws are terrific, I feel that we are missing a few pieces here. The talk in the committee was that it was the House actually that we wanted to be sure understood that this wasn't a get out of jail free card, which is why we spelled out the language, because not everybody has your background and understands what the judicial process is; that law enforcement can't actually

grant immunity. We felt it would have a better chance in the House if that was clear to everybody that it wasn't a get out of jail free card for people that were sort of feigning a drug overdose or whatever the case may be.

Sen. Armstrong: That's why I think we're comfortable with the second part of the language and I understand that part of it. I agree with you, in committee testimony, I called this bill the "get out of jail free when I didn't know I was going to get out of jail free card". I call it the Good Samaritan bill because the person who calls the cops most likely isn't going to know this immunity exists and they are going to wait there fully expecting to get in trouble. Then they are going to be told that they did the right thing, thank you. You're not going to get into trouble. As often as you are worried about somebody manipulating and abusing this system, I think that scenario is much more likely to occur. It's going to be your brother or best friend and they do something really silly and you might be taking the same drugs they are and you're going to wait there fully expecting to get arrested when you're done and the cops are going to look at you and give you a big hug and say thank you for calling. It's your lucky day, you have immunity, don't ever do this again. That is probably most likely to happen. I know that we passed the alcohol bill two years ago and I don't even know if it has been used. This is one of those things that will be used very sparingly.

Rep. Larson: We actually didn't pass the alcohol bill two years ago because it was connected with this one and we couldn't reach any agreement at all in our conference committee. However, the immunity for alcohol overdose for juveniles has been on the books for many years. A juvenile that calls in an emergency on an alcohol overdose is immune. We should probably look up that statute is written because that would certainly clarify. I can do some research on that issue.

Sen. Armstrong: Is everyone okay with the second language (assent). Rep. Larson and I will work together to get all the players on board to get it right before we come back (assent). I don't want to spell it out in the code and make it different than how we treat immunity everywhere else in the Code. Immunity is what it is. I just want to make sure that law enforcement is comfortable with it too. They are going to be ground zero. I'm okay with that.

Rep. Wallman: Will there be an educational process with law enforcement so that they know in these situations they do have to get the information from anyone on the scene. They will continue to collect names and phone numbers, up to three people who could get immunity.

Rep. Larson: As far as the education portion of it, the naloxone (drug for overdoses), wasn't that bill up this session too, letting the drug be handled by the law enforcement. We passed that. It wasn't part of this bill but it was a separate bill. As far as the educational piece, I know that DHS, Pam Sagness works specifically with getting education out regarding drugs and how parents lead to talk to their kids about drugs. That seems to me to just notify her that this would be another good spot to try and get some of this information out. I know that School Resource Officers and many others do a lot of school talks on drugs and alcohol. I think that there is a method for that to happen anyway.

Sen. Nelson: I think the Peace Officers Association has in-service that's required every year and they would already be covered; this is going to be near the top of the list, of what you can and can't do.

Sen. Armstrong: I talked with Aaron Birst a little bit about it. This is really a conversation between your states attorneys, law enforcement, chief, etc. But before we do it, I want to make sure they are comfortable. If they are comfortable we can make it happen. Hopefully regardless we'll either go back to the original Senate language if everyone is comfortable on the top part, not the bottom part or we'll get some language that's tightened up enough that we know where it's going for the next meeting. Hopefully we can vote on the amendment and be done. Thank you. We will close the meeting.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2070
4/13/2015
26046

- Subcommittee
- Conference Committee

Committee Clerk Signature *Penrose*

Minutes:

|

Sen. Armstrong: Called meeting to order, all members present. (# 1)

Rep. Larson: In listening to you describe the way that the law actually works, with that succession, I did go with Bruce Burkett, NDPOA and spoke with Legislative Council and they absolutely reaffirmed what you said. We are fine with having that first amendment that we had removed from this bill. We are fine with the bill now.

Sen. Luick: I move that the House recede from the House amendments and adopt amendments found on SJ page 1088.

Rep. Larsen: Second the motion.

6 YES 0 NO 0 ABSENT

HOUSE RECEDE FROM HOUSE AMENDMENTS AND AMEND FURTHER.

SENATE CARRIER: Sen. Armstrong

HOUSE CARRIER: Rep. Larsen

April 13, 2015

JW
4/13/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2070

That the House recede from its amendments as printed on page 1088 of the Senate Journal and page 1259 of the House Journal and that Senate Bill No. 2070 be amended as follows:

Page 1, line 13, replace "and" with an underscored comma

Page 1, line 15, after "individual" insert ", and the overdosed individual must have been in need of emergency medical services"

Renumber accordingly

Date: 4-13-2015
 Roll Call Vote #: 1

**2015 SENATE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. 2070 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: Sen. Luick Seconded by: Rep. Larsen

Senators	4/8	4/13	Yes	No	Representatives	4/8	4/13	Yes	No
<u>Sen. Armstrong</u>	✓	✓	✓		<u>Rep. Larsen</u>	✓	✓	✓	
<u>Luick</u>	✓	✓	✓		<u>Brabundt</u>	✓	✓	✓	
<u>Nelson</u>	✓	✓	✓		<u>Wallman</u>	✓	✓	✓	
Total Senate Vote					Total Rep. Vote				

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Sen. Armstrong House Carrier Rep. Larsen

LC Number 15.0045.02002 . 04000 of amendment

LC Number _____ of engrossment

Emergency clause added or deleted: _____

Statement of purpose of amendment: _____

REPORT OF CONFERENCE COMMITTEE

SB 2070: Your conference committee (Sens. Armstrong, Luick, Nelson and Reps. Larson, Brabandt, Wallman) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ page 1088, adopt amendments as follows, and place SB 2070 on the Seventh order:

That the House recede from its amendments as printed on page 1088 of the Senate Journal and page 1259 of the House Journal and that Senate Bill No. 2070 be amended as follows:

Page 1, line 13, replace "and" with an underscored comma

Page 1, line 15, after "individual" insert ", and the overdosed individual must have been in need of emergency medical services"

Renumber accordingly

SB 2070 was placed on the Seventh order of business on the calendar.

2015 TESTIMONY

SB 2070

Testimony of Howard C. Anderson Jr. on Senate Bill No. 2070

January 13, 2015 before the Senate Judiciary Committee. David Hogue
Chairman

Chairman Hogue and members of the Senate Judiciary Committee. This bill comes to you as an effort to save a few lives of North Dakotans. This legislation is one of the initiatives of the Broad Coalition on Reducing Pharmaceutical Narcotics in Our Communities. This group has been meeting since early 2013. I here is an excerpt from the November 12, 2014 minutes of the Task force:

Overdose Prevention:

The main area of focus for this topic centered around legislative action items (1) good Samaritan bill and (2) naloxone rescue kit bill draft. Senator Anderson shared copies of both bill drafts. He stated that the Good Samaritan bill draft was just recently sent out to respective parties for feedback. The bill will be tweaked based on comments that are sent back to this group or Senator Anderson directly.

The bill you see today is based on the feedback we received from law enforcement and prosecutors who reviewed the first drafts.

When someone gets left in the basement, the back of a car or even dropped off at the hospital with no information on what they have taken, because their "friends" or acquaintances are afraid they will be prosecuted for being with them or at the same party, it is an overdose risk that we can help to mitigate with this piece of legislation.

I have provided some handouts and will touch on them briefly as background for the bill.

Thank you,

Howard

#1-2

More than 100 people die every day in the United States from a drug overdose. Overdose deaths have surpassed auto collisions as the leading cause of accidental death in the United States.



To learn more about the Good Samaritan + Naloxone efforts in Minnesota or to join the Good Samaritan Coalition, visit the coalition's Facebook page: www.facebook.com/911GoodSamaritanNaloxoneCampaign and follow us on twitter @MNGoodSam.

For more information contact Lexi Reed Holtum 651-308-8122 or lexi@steverummlerhopefoundation.org

Good Samaritan Laws Save Lives

The chance of surviving an opioid overdose, like that of surviving a heart attack, depends greatly on how fast one receives medical assistance. Witnesses to heart attacks rarely think twice about calling 911, but witnesses to an overdose often hesitate to call for help or, in many cases, simply don't make the call because they often fear arrest, even in cases where they need professional medical assistance for a friend or family member. The best way to encourage overdose witnesses to seek medical help is to exempt them from criminal prosecution, an approach referred to as 911 Good Samaritan immunity laws.

Naloxone Also Saves Lives

Naloxone is a safe way to immediately reverse an opiate overdose and an effective way to halt the growing toll of accidental overdose fatalities. Naloxone is a non-addictive opioid antagonist used to counteract the effects of overdose by blocking opioid receptors in the brain and restoring normal breathing. Naloxone is not a controlled substance, has no abuse potential and can be administered by ordinary citizens with little or no formal training. A study published in the *Annals of Internal Medicine* found that distribution of the overdose antidote naloxone could prevent as many as 43,000 deaths.

Event Summary

OVERDOSE PREVENTION

- **Need for local or state data projects**
 - Doctorate of Nursing/Master of Public Health Programs
 - Center for Disease Control (CDC) Research Staff (Dept of Health)

- **Legislative Action**
 - Good Samaritan Draft - Senator Howard Anderson
 - Naloxone Draft (similar to Steve's Law) - Senator Howard Anderson
 - Need support and people to testify

- **Education (Develop Messaging Plan - Target Audiences)**
 - Access to Naloxone
 - Prescribers can prescribe but they don't (identify barriers)
 - Medical Association & others act as spokesperson
 - Access (ambulances, pharmacy)
 - Administration (EMT, first responders)
 - Payment

- **Additional Members Invited to Task Force (EMT, fire, etc.)**

DATA

- **Need for statewide data (Takes resources to get resources.)**
 - Emergency, hospitals, clinics, vital statistics
 - Coroner training concerns
 - State Health Council

- **Education (Communicate data to policy makers and stakeholders)**

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Introduced by
Senator Anderson

A BILL for an Act to create and enact a new section to chapter 19-03.1 of the North Dakota Century Code, relating to immunity from criminal liability for medical emergencies involving drugs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-03.1 of the North Dakota Century Code is created and enacted as follows:

Overdose prevention and immunity.

An individual is immune from criminal prosecution under sections 19-03.1-22.1; 19-03.1-22.3; 19-03.1-22.5; subsection 7 of 19-03.1-23; subsection 3 of 19-03.2-03; or 19-03.4-03 if that individual contacted law enforcement or emergency medical services and reported that another individual was in need of emergency medical assistance due to a drug overdose or was the individual in need of emergency medical assistance. To receive immunity under this section, the individual receiving immunity must have provided assistance to the individual in need of emergency medical assistance, remained on the scene until assistance arrived and cooperated with emergency medical services and law enforcement personnel in the medical treatment of the individual for which the report was made. The maximum number of individuals that may be immune for any one occurrence is three individuals. Immunity from prosecution under this section shall not be applicable for a violation as outlined in 19-03.1-23.1.

19-03.1-22.1. Volatile chemicals - Inhalation of vapors prohibited - Definitions - Penalty.

19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.

19-03.1-22.5. Controlled substance analog use - Venue for violation - Penalty.

19-03.1-23. (subsection 7) Prohibited acts A - Mandatory terms of imprisonment and fines - Unclassified offenses - Penalties. (Subsection 7 only – simple possession)

19-03.1-23.1. Increased penalties for aggravating factors in drug offenses.

19-03.2-03. Prohibited acts - Penalties - Exception. (Imitation controlled substance-subsection 3 only – simple possession)

19-03.4-03. Unlawful possession of drug paraphernalia

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REDUCING PHARMACEUTICAL NARCOTICS IN OUR COMMUNITIES

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#1-6

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**REDUCING PHARMACEUTICAL NARCOTICS IN OUR COMMUNITIES
THROUGH EDUCATION AND AWARENESS**

DATE: AUGUST 26, 2014

TO: PHARMACEUTICAL NARCOTICS STAKEHOLDERS

FROM: JOHN VASTAG

RE: MINUTES FROM AUGUST 26, 2014 MEETING

ATTENDEES: Howard C. Anderson – ND Board of Pharmacy; Tim Blasl – ND Hospital Association; Mark Doerner – DHS; Becky Dohrmann – Senator Hoeven’s Office; Gary Euren – Cass County Assistant State’s Attorney; Katie Fitzsimmons – ND Medical Association; Lonnie Grabowska – ND Bureau of Criminal Investigation; Dan Hannaher – Sanford Health; Mark Hardy – ND Board of Pharmacy; Brad Hawk – ND Indian Affairs Commission; JoAnne Hoesel – DHS; Duane Houdek – ND Board of Medical Examiners; Courtney Koebele – ND Medical Association; Senator Judy Lee – District 13; Andy McLean – DHS; Andrew Nyhus – Representative Kevin Cramer’ Office; Stacey Pfenning – Advanced Practice Registered Nurses; Mike Reitan – West Fargo Police Department; Pamela Sagness – DHS; Mike Schwab – ND Pharmacists Association; Dr. Mary Ann Sens – University of North Dakota Department of Pathology; John Vastag – Blue Cross Blue Shield of ND

1) JoAnn Hoesel – HHS Meeting

JoAnn and Dr. Andrew McLean provided an update from the National Advancing Policy and Practice – A 50-State Working Meeting to Prevent Opioid Related Overdose.

JoAnn noted that they had three key strategies:

- a) Health Provider Oversight
- b) PDMP
- c) Prescribing Guidelines

She asked the members to consider the degree of support to mandate education on the topic for physicians and others.

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Below is the summary of the meeting that JoAnne and Dr. McLean attended. The document contains the link to the full HHS document which lists the 8 domains we might use as a guide to determine ND strategies:

1. Surveillance
2. Drug Abuse Prevention
3. Patient and Public Education
4. Provider Education
5. Clinical Practice Tools
6. Regulatory and Oversight Activities
7. Drug Abuse Treatment
8. Overdose Prevention

Meeting Summary:



50 state Prescription
Drug Abuse meeting :

CDC document handed out at the meeting:



CDC Vital Signs -
Where You Live Make

2) Dr. Mary Ann Sens

Dr. Sens indicated that they have some concerns in the eastern part of the state due to an increase in prescription drug overdoses. She noted that the national data indicates that ND has 3-4 deaths per 100,000 but they are seeing numbers five times higher.

They are seeing patterns in drug prescribing and have also identified issues with death certificates. She indicated they are quite concerned about the selling of prescription drugs and noted that in all the other states that have addressed the prescription drug issue have seen a dramatic increase in heroin usage. She also touched on the possibility of a wider use of "rescue" drugs such as Narcan.

Dr. Sens' presentation:



Notes for
Prescription Drug Abu

3) Pam Sagness

Pam provided the members with an update on the following:

- a. They are hosting a Behavioral Health Conference the following week
- b. They did not receive the grant from SAMSA
- c. They would like to host a seminar in Bismarck addressing the issues that the committee has been focusing on. Pam will send a survey out requesting topics for this working meeting. This meeting would potentially take place in October.
- d. Pam also mentioned pricing for the Take Back ad campaign

Cost List:



Take Bake Program
Cost List.pdf

- e. John Vastag mentioned that a draft letter is done and waiting for further recommendations from the members. It was decided that we hold off on sending the fund raising letter out until the DEA final rules are published.

4) Legislative Updates/Good Sam Draft

- a. Senator Anderson gave the members an update on the draft of the "Good Sam" overdose prevention and immunity bill.

Bill draft:



Good Sam.docx

- b. Senator Anderson also noted that the "Hydrocodone" types of drugs will become Schedule 2 drugs as of October 6, 2014.

#1 - 11

- c. DEA has not published the Take Back final rules although they are expected to be published this year.
- d. Mark Schwab noted that the pharmacies and the AG's office plan to start a program in ND when the final regulations are published.
- e. Lonnie Grabowska noted that they are having a National Take Back Day on September 27, 2014 with a "Fargo Drug Burning" event on September 26, 2014. Liz, from the Attorney General's office, will be sending out a press release on this event.

5) Meeting with the Governor

- a. Duane Houdek gave members a quick update on a potential meeting with the Governor. He is going to check on possible dates. Senator Lee suggested the possibility of September 16th or 17th as they correlate with interim committees meetings.

6) Next Meeting – The next meeting will be coordinated with the seminar that Pam Sagness is coordinating. The committee will plan to meet for an hour after the seminar to discuss further action items.

Respectfully submitted,

John Vastag

Additional Information:

Trust for America's Health Report –

Prescription Drug Abuse: Strategies to Stop the Epidemic 2013



Prescription Drug
Abuse 2013.pdf

Senate Bill 2070
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 2070.

I had participated in discussions during the interim on reducing prescription drug abuse within North Dakota. As part of those discussions, a concern was expressed for the need to provide a person the ability to report a suspected drug overdose without the fear the person would be charged with a crime. A proposed bill was drafted based on the language of NDCC 05-01-09(2) relating to reporting the over consumption of alcohol. The draft was circulated through a number of groups to solicit their comments. A request was made to keep the immunity narrowly focused on the crimes involving the use of narcotics. I believe the draft meets that request.

I personally do not recall a time when I was involved in a case relating to an alcohol poisoning where a person was charged or where a person had applied for and received immunity under 05-01-09(2). I am not overly optimistic such reports will be any different relating to drug overdoses. By providing the opportunity for immunity we can hope those involved in the situation do the right thing and make the call that could save a life.

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

Michael D Reitan
Chief of Police, West Fargo

4/13/2015 #3-1

SENATE BILL NO. 2070

My name is Tyler Auck and I am here in support of SENATE BILL NO. 2070.

Currently, I am forty years old. I have a beautiful wife and I am the father of two teenage girls as well as a three month old son. I grew up in Bismarck with my two younger brothers who, along with my mom, reside in Bismarck. My father passed away in 2006 at the age of 53. He was an active drug user and, as a child, I grew up in a world filled with drugs and violence.

Some of the things that I am going to tell you about my past I am not proud of, but they are a permanent and relevant part of me and have helped shape the person that I am today. I am a student, father, husband, friend, role model and a hard working, trustworthy member of our community. I am also a recovering drug addict. I have been sober since January 5, 2011. For twenty-two years I was an active user of narcotics and throughout those years I experienced several deaths from accidental overdose.

At twenty two years old, I was living in Boulder, Colorado and my disease had such a strong hold on my mind, body and spirit that I had to use the drugs the minute I received them no matter the cost. One night I started smoking large amounts of cocaine and heroin, and I overdosed. I remember not being able to see or breathe as I hit the floor. I remember laying there, hearing the people around me talking. They wanted to take me to the hospital, but they were afraid of getting in trouble. So instead of getting me help they dragged, what they thought was my dead body, out of the apartment building and tried to throw me into the dumpster. They couldn't lift my limp, lifeless body up into it so they left me lay next to the dumpster to die. Full of fear that helping me meant being thrown

in jail. It's a horrible and helpless feeling to have people touching you as you are dying and then turn ^{their} backs and walk away. After some time, I came to and crawled to the street where a car stopped and called 911, which saved my life.

I can relate to both sides of this ordeal because a year later I found myself on the other side of the coin, at my home in Boulder, when my roommate Pat overdosed on large amounts of cocaine. Suddenly he fell over with blood coming out of his nose and ears and the veins on his face were bulging out. This is an incredibly scary thing to witness and I wanted to call 911, but I was afraid of what would happen when the police showed up as I knew that there was a good chance I would be going to jail. So there I sat, just watching him, thinking that he was dying. And as horrible as it sounds, I even thought about where I was going to put his body after he died. Luckily, Pat came out of it without any medical intervention.

Twenty plus years later, these memories are vivid and ingrained in my mind's eye. The feelings that these memories evoke still bring tears to my eyes. I did not set out to have the disease of drug addiction, no one ever does. But I have it and it's mine, this addiction that is in remission today and it's a blessing in so many ways. Today I'm able to stand up here for the first time in my life and tell you all of these hard experiences that I am not proud of, but are a part of my story. Now, I'm not asking anyone to take pity on me. All I want is for you to close your eyes, to stop and think. What if this was your son, daughter, brother, sister, mother, kids or grandkids. I guarantee that no one in this room would want their loved one left by a dumpster or on a street corner to die alone, when

help could be made available, if not for fear of the consequences of asking for it.

I feel very strongly that if this bill was passed it would save lives, because we are all worth it. Thank you for letting me speak on this issue. Does anyone have any questions? Thank you.

Tyler Auck

1-701-989-9974

2011 Marian Dr. Bismarck ND 58501

My name is Dr. Melissa Henke and I am currently the medical director of the Heartview Foundation, a local drug and alcohol treatment facility here in Bismarck. I have been in this position for the past five years and primarily I work with opiate dependent individuals but I also work with those that have other substance use disorders including alcohol and other drugs. I am here to ask your support of Senate Bill 2070. What I have noticed in the past 5 years is a dramatic increase in the number of people affected by prescription opiate dependency. We have also seen a rise in heroin addiction and a resurgence in methamphetamine abuse. This is affecting every community in the state of North Dakota. With an increase in drug usage we will see an increase in drug overdose deaths. Here's what we know about drug overdoses:

- Overdose deaths doubled in the United States between 1999 and 2011
- 113 people die every day in the United States of a drug overdose
- People living in rural areas are at increased risk of drug overdose deaths
- Native Americans are at increased risk of drug overdose deaths
- Drug overdoses surpassed motor vehicle accidents as the leading cause of injury-related death in 2009 and that trend has continued every year since
- Drug overdose deaths are preventable
- Opiate overdoses are reversible if treated early
- All overdoses benefit from early intervention, regardless of the drug ingested
- Multiple large scale studies have demonstrated that people at the scene of a drug overdose are reluctant to call 911 because they fear prosecution for drug possession and paraphernalia
- 911 Good Samaritan laws already exist in 23 states

In the last five years I have come to realize that those in recovery from drug and alcohol abuse are some of the most articulate, creative, genuine, compassionate, hardworking, amazing people that I have ever had the pleasure and privilege to work with. Senate Bill 2070 is about saving lives of people so that they have the opportunity to reach their full potential and affect the communities where they live in a positive manner. It sends a message to people who are struggling with drug and alcohol dependency that we care more about their lives than we do about keeping our jails full. Senate Bill 2070 will save lives in North Dakota and I urge you to support this bill. Thank you for your time and consideration.

Testimony on SB 2070

My name is Bruce Burkett, a spokesperson for the North Dakota Peace Officers Association. NDPOA has membership that encompasses all the disciplines involved in law enforcement in North Dakota. Our organization's Legislative committee reviews all bills proposed during the legislative session for the purpose of analyzing legislation that has positive and or negative impact to our mission. Because we do represent numerous law enforcement disciplines, if a bill appears to impact only one discipline area, the agency most affected will provide their view point when appropriate. In areas where all disciplines are in agreement, I will provide initial input for NDPOA and in many cases any other of our members are encourage to provide a voice.

Senate Bill 2070 is proposed to give immunity from criminal liability for a series of drug related statutes that already exist. An individual that contacts emergency medical services or law enforcement reporting the individual was in need of EMS assistance due to a drug overdose would be the one receiving immunity. He would be self-reporting. The bill outlines a series of existing statutes the contacting individual might be charged with if no immunity existed. The need for immunity would mean that the contacting person had some culpability in the event, was a conspirator or facilitated in some way that caused or aided the overdose himself or of another.

19-03.1-22.1. Volatile chemicals - Inhalation of vapors prohibited - Definitions - Penalty.

An individual is guilty of a class B misdemeanor if that individual intentionally inhales the vapors of a volatile chemical in a manner designed to affect the individual's central nervous system; to create or induce a condition of intoxication, hallucination, or elation; or to distort, disturb, or change the individual's eyesight, thinking processes, balance, or coordination. This section does not apply to inhalations specifically prescribed for medical, dental, or optometric treatment purposes or to controlled substances described in this chapter. For the purposes of this section, "volatile chemical" includes the following chemicals or their isomers: (list of compounds)..

19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.

A person who intentionally ingests, inhales, or otherwise takes into the body a controlled substance, unless the substance was obtained directly from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, is guilty of a class A misdemeanor. The venue for a violation of this section exists in either the jurisdiction in which the controlled substance was ingested, inhaled, or otherwise taken into the body or the jurisdiction in which the controlled substance was detected in the body of the accused.

19-03.1-22.5. Controlled substance analog use - Venue for violation - Penalty.

1. The use of controlled substance analog includes the ingestion, inhalation, absorption,

or any other method of taking the controlled substance analog into the body. An individual who intentionally uses a controlled substance analog is guilty of a class C felony, unless the individual obtains the analog directly from a practitioner or pursuant to a valid prescription or order of a practitioner.

2. The venue for a violation under this section exists in the jurisdiction in which the substance was used or in which the substance was detected.

19-03.1-23. Prohibited acts A - Mandatory terms of imprisonment and fines -

Unclassified offenses – Penalties----(7.) It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class C felony. If, at the time of the offense the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony. Any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana is guilty of a class A misdemeanor. Any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana is guilty of a class B misdemeanor. Any person who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle is guilty of a class A misdemeanor.

19-03.2-03. Prohibited acts - Penalties - Exception. (Imitation drugs)

3. It is a class B misdemeanor for a person to use, or to possess with intent to use, an imitation controlled substance.

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.

The bill attempts to reward the contacting individual as a Good Samaritan. The origin of the Good Samaritan story found in the Bible recount the story of a traveler that was set upon by robbers, stealing his clothes, beating him and leaving him for dead. Two others came by saw the man and left him. The third man, a Samaritan came across the man, feeling sorry for him,

stopped and cleaned and bandaged his wounds. Finally moving him to safety in an inn where his needs were taken care of.

A modern day Good Samaritan would not need immunity for reporting a drug overdose to EMS and or Law Enforcement and assisting the individual.

It's our opinion the bill as written, while attempting to get help to a specific type of medical emergency or perceived emergency will be used to avoid responsibility for illegal drug use. The elements to obtain the immunity are specific; the contact by the individual reported himself or another individual was in need of emergency medical assistance due to a drug overdose. What about another type of medical emergency that mimics drug use effects? Does the contactor have to know it's a drug overdose? What is the reason for setting the maximum number of individuals that may be immune for any one occurrence at three individuals? Who makes that determination? States Attorney? How can three individuals all be considered valid contactors?

Given the almost unlimited scenarios that can occur with those in the drug culture, we would recommend changing immunity for contacting EMS and LE to **consideration** for the actual help provided by the contactor in mitigation of the outcome of the incident and his responsibility for the event. The States Attorney would have a duty to review the totality of the circumstances of the event and determine an appropriate offer of a graduated immunity (consideration) from a full decline to prosecute or inclusion of substantial conditions of a deferred prosecution.

Prepared by Bruce Burkett for the North Dakota Peace Officers Association.

#1
SB 2070
3-10-15

Testimony of Howard C. Anderson Jr. on Senate Bill No. 2070

March 10, 2015 before the House Judiciary Committee, Kim Koppelman
Chairman

Chairman Koppelman and members of the House Judiciary Committee.
This bill comes to you as an effort to save a few lives of North Dakotans.
This legislation is one of the initiatives of the Broad Coalition on
Reducing Pharmaceutical Narcotics in Our Communities. This group has
been meeting since early 2013. Here is an excerpt from the November
12, 2014 minutes of the Task force:

Overdose Prevention:

The main area of focus for this topic centered around legislative action
items (1) good Samaritan bill and (2) naloxone rescue kit bill draft.
Senator Anderson shared copies of both bill drafts. He stated that the
Good Samaritan bill draft was just recently sent out to respective
parties for feedback. The bill will be tweaked based on comments that
are sent back to this group or Senator Anderson directly.

The bill you see today is based on the feedback we received from law
enforcement and prosecutors who reviewed the first drafts.

When someone gets left in the basement, the back of a car or even
dropped off at the hospital with no information on what they have
taken, because their "friends" or acquaintances are afraid they will be
prosecuted for being with them or at the same party, it is an overdose
risk that we can help to mitigate with this piece of legislation.

Thank you,

Howard

Introduced by
Senator Anderson

A BILL for an Act to create and enact a new section to chapter 19-03 1 of the North Dakota Century Code, relating to immunity from criminal liability for medical emergencies involving drugs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-03 1 of the North Dakota Century Code is created and enacted as follows:

Overdose prevention and immunity.

An individual is immune from criminal prosecution under sections 19-03.1-22.1; 19-03.1-22.3; 19-03.1-22.5; subsection 7 of 19-03.1-23; subsection 3 of 19-03.2-03; or 19-03.4-03 if that individual contacted law enforcement or emergency medical services and reported that another individual was in need of emergency medical assistance due to a drug overdose or was the individual in need of emergency medical assistance. To receive immunity under this section, the individual receiving immunity must have provided assistance to the individual in need of emergency medical assistance, remained on the scene until assistance arrived and cooperated with emergency medical services and law enforcement personnel in the medical treatment of the individual for which the report was made. The maximum number of individuals that may be immune for any one occurrence is three individuals. Immunity from prosecution under this section shall not be applicable for a violation as outlined in 19-03.1-23.1.

19-03.1-22.1. Volatile chemicals - Inhalation of vapors prohibited - Definitions - Penalty.

19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.

19-03.1-22.5. Controlled substance analog use - Venue for violation - Penalty.

19-03.1-23. (subsection 7) Prohibited acts A - Mandatory terms of imprisonment and fines - Unclassified offenses - Penalties. (Subsection 7 only – simple possession)

19-03.1-23.1. Increased penalties for aggravating factors in drug offenses.

19-03.2-03. Prohibited acts - Penalties - Exception. (Imitation controlled substance-subsection 3 only – simple possession)

19-03.4-03. Unlawful possession of drug paraphernalia

REDUCING PHARMACEUTICAL NARCOTICS IN OUR COMMUNITIES

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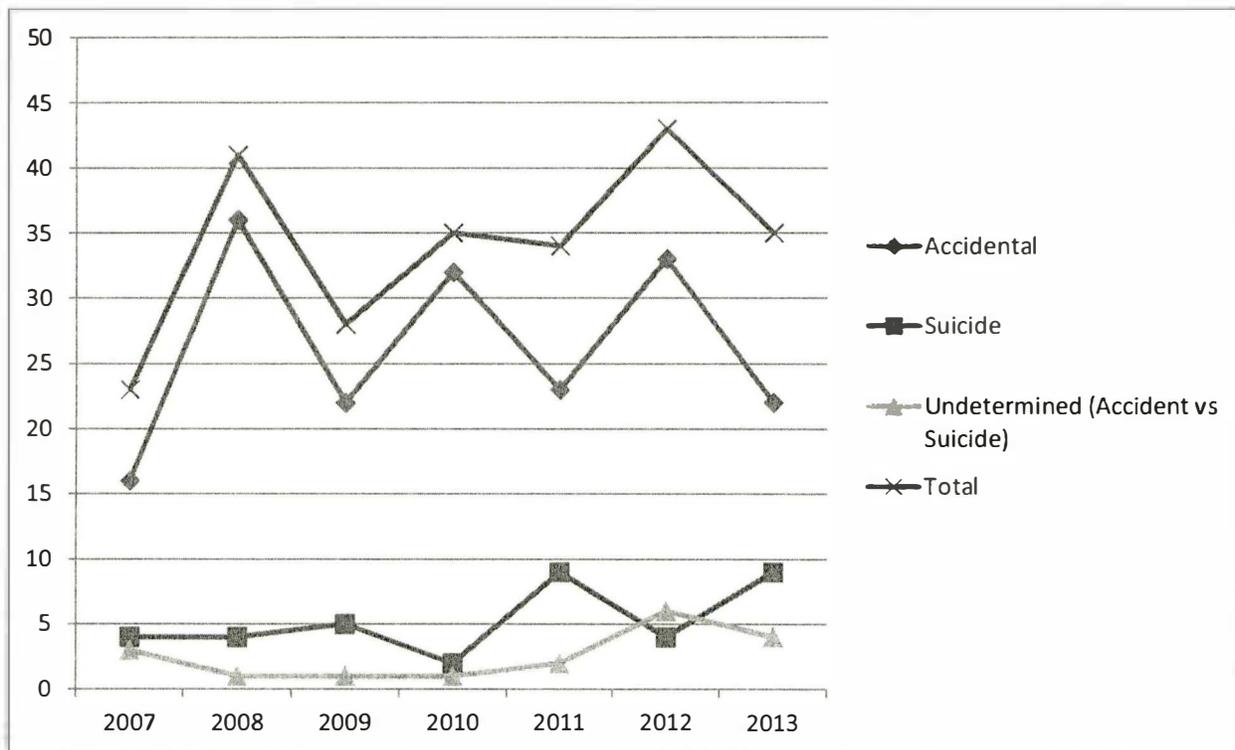
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	Accidental	Suicide	Undetermined (Accident vs Suicide)	Totals
2007	16	4	3	23
2008	36	4	1	41
2009	22	5	1	28
2010	32	2	1	35
2011	23	9	2	34
2012	33	4	6	43
2013	22	9	4	35

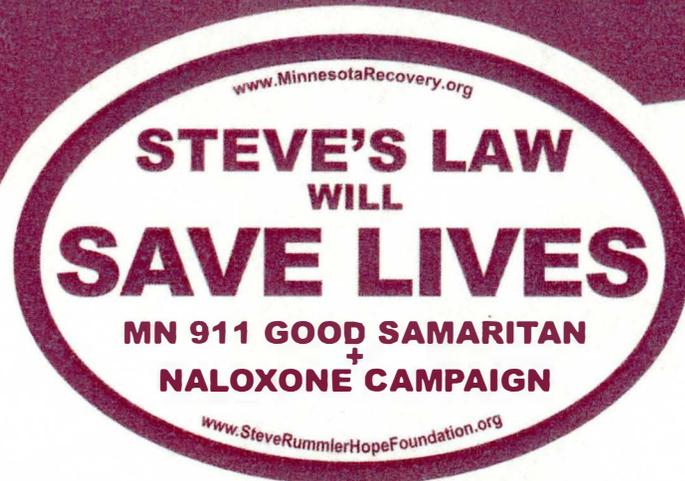
2014 | Provisional data available in a couple months
2014 totals will be available by April 2015.

Overdose Death Rates in North Dakota

6

7

More than 100 people die every day in the United States from a drug overdose. Overdose deaths have surpassed auto collisions as the leading cause of accidental death in the United States.



To learn more about the Good Samaritan + Naloxone efforts in Minnesota or to join the Good Samaritan Coalition, visit the coalition's Facebook page: www.facebook.com/911GoodSamaritanNaloxoneCampaign and follow us on Twitter @MNGoodSam.

For more information contact Lexi Reed Holtum 651-308-8122 or lexi@steverummlerhopefoundation.org

Good Samaritan Laws Save Lives

The chance of surviving an opioid overdose, like that of surviving a heart attack, depends greatly on how fast one receives medical assistance. Witnesses to heart attacks rarely think twice about calling 911, but witnesses to an overdose often hesitate to call for help or, in many cases, simply don't make the call because they often fear arrest, even in cases where they need professional medical assistance for a friend or family member. The best way to encourage overdose witnesses to seek medical help is to exempt them from criminal prosecution, an approach referred to as 911 Good Samaritan immunity laws.

Naloxone Also Saves Lives

Naloxone is a safe way to immediately reverse an opiate overdose and an effective way to halt the growing toll of accidental overdose fatalities. Naloxone is a non-addictive opioid antagonist used to counteract the effects of overdose by blocking opioid receptors in the brain and restoring normal breathing. Naloxone is not a controlled substance, has no abuse potential and can be administered by ordinary citizens with little or no formal training. A study published in the *Annals of Internal Medicine* found that distribution of the overdose antidote naloxone could prevent as many as 43,000 deaths.



➔ What is Steve's Law

"Steve's Law," named after Steve Rummel, who died of a opioid overdose in 2011, and after whom the Steve Rummel Hope Foundation was formed and named, is MN's Good Samaritan + Naloxone legislation, which will follow 19 other states and the District of Columbia in establishing Good Samaritan laws and/or access to naloxone.

Steve's Law would SAVE LIVES in Minnesota by:

- ➔ providing immunity to those who call 911 in good faith to save a life, and
- ➔ allowing law-enforcement and the public to access and administer naloxone (brand name Narcan), to save lives



FACEBOOK PAGE

www.minnesotarecovery.org | www.steverummelhopefoundation.org | www.facebook.com/911GoodSamaritanNaloxoneCampaign

Please take a moment TODAY to call your MN Legislators and tell them you support Steve's Law and they should too! Tell them Minnesota needs to pass this life saving legislation as soon as possible!

*Find out who your legislators are here:
www.gis.leg.mn/OpenLayers/districts/*

#2
SB2070
3-10-15

SENATE BILL NO. 2070

My name is Tyler Auck and I am here in support of SENATE BILL NO. 2070.

Currently, I am forty years old. I have a beautiful wife and I am the father of two teenage girls as well as a three month old son. I grew up in Bismarck with my two younger brothers who, along with my mom, reside in Bismarck. My father passed away in 2006 at the age of 53. He was an active drug user and, as a child, I grew up in a world filled with drugs and violence.

Some of the things that I am going to tell you about my past I am not proud of, but they are a permanent and relevant part of me and have helped shape the person that I am today. I am a student, father, husband, friend, role model and a hard working, trustworthy member of our community. I am also a recovering drug addict. I have been sober since January 5, 2011. For twenty-two years I was an active user of narcotics and throughout those years I experienced several deaths from accidental overdose.

At twenty two years old, I was living in Boulder, Colorado and my disease had such a strong hold on my mind, body and spirit that I had to use the drugs the minute I received them no matter the cost. One night I started smoking large amounts of cocaine and heroin, and I overdosed. I remember not being able to see or breathe as I hit the floor. I remember laying there, hearing the people around me talking. They wanted to take me to the hospital, but they were afraid of getting in trouble. So instead of getting me help they dragged, what they thought was my dead body, out of the apartment building and tried to throw me into the dumpster. They couldn't lift my limp, lifeless body up into it so they left me lay next to the dumpster to die. Full of fear that helping me meant being thrown

in jail. It's a horrible and helpless feeling to have people touching you as you are dying and then turn thier backs and walk away. After some time, I came to and crawled to the street where a car stopped and called 911, which saved my life.

I can relate to both sides of this ordeal because a year later I found myself on the other side of the coin, at my home in Boulder, when my roommate Pat overdosed on large amounts of cocaine. Suddenly he fell over with blood coming out of his nose and ears and the veins on his face were bulging out. This is an incredibly scary thing to witness and I wanted to call 911, but I was afraid of what would happen when the police showed up as I knew that there was a good chance I would be going to jail. So there I sat, just watching him, thinking that he was dying. And as horrible as it sounds, I even thought about where I was going to put his body after he died. Luckily, Pat came out of it without any medical intervention.

Twenty plus years later, these memories are vivid and ingrained in my mind's eye. The feelings that these memories envoke still bring tears to my eyes. I did not set out to have the disease of drug addiction, no one ever does. But I have it and it's mine, this addiction that is in remission today and it's a blessing in so many ways. Today I'm able to stand up here for the first time in my life and tell you all of these hard experiences that I am not proud of, but are a part of my story. Now, I'm not asking anyone to take pity on me. All I want is for you to close your eyes, to stop and think. What if this was your son, daughter, brother, sister, mother, kids or grandkids. I guarentee that no one in this room would want their loved one left by a dumpster or on a street corner to die alone, when

help could be made available, if not for fear of the consequences of asking for it.

I feel very strongly that if this bill was passed it would save lives, because we are all worth it. Thank you for letting me speak on this issue. Does anyone have any questions? Thank you.

Tyler Auck

1-701-989-9974

2011 Marian Dr. Bismarck ND 58501

My name is Dr. Melissa Henke and I am currently the medical director of the Heartview Foundation, a local drug and alcohol treatment facility here in Bismarck. I have been in this position for the past five years and primarily I work with opiate dependent individuals but I also work with those that have other substance use disorders including alcohol and other drugs. I am here to ask your support of Senate Bill 2070. What I have noticed in the past 5 years is a dramatic increase in the number of people affected by prescription opiate dependency. The United States has only 5% of the world's population yet we consume 80% of the world's prescription opiates. North Dakota is not immune from this gross overconsumption. We have also seen a rise in heroin addiction and a resurgence in methamphetamine abuse. This is affecting every community in the state of North Dakota. With an increase in drug usage we will see an increase in drug overdose deaths. Here's what we know about drug overdoses:

- Overdose deaths tripled in the United States between 1999 and 2014
- 120 people die every day in the United States of a drug overdose
- In North Dakota last year there were 35 opiate overdose deaths and that is likely underreported
- People living in rural areas are at increased risk of drug overdose deaths
- Native Americans are at increased risk of drug overdose deaths
- Drug overdoses surpassed motor vehicle accidents as the leading cause of injury-related death in 2009 and that trend has continued every year since
- Drug overdose deaths are preventable
- Opiate overdoses are reversible if treated early
- All overdoses benefit from early intervention, regardless of the drug ingested
- Multiple large scale studies have demonstrated that people at the scene of a drug overdose are reluctant to call 911 because they fear prosecution for drug possession and paraphernalia – 911 is called less than 50% of the time in most of these studies
- 911 Good Samaritan laws already exist in at least 21 states and on over 90 college campuses

I realize that there is concern that drug users will use this legislation as a way to seek immunity when they are at a party and law enforcement arrives. This bill specifically states in line 11 that there is need for emergency medical assistance due to a drug overdose. I have faith in our law enforcement and emergency medical personnel that they would be able to determine if an actual overdose has taken place or if someone is simply feigning an overdose to avoid legal consequences. If there isn't an actual overdose then there will be no immunity from prosecution.

SB2070

In the last five years I have come to realize that those in recovery from drug and alcohol abuse are some of the most articulate, creative, genuine, compassionate, hardworking, amazing people that I have ever had the pleasure and privilege to work with. Senate Bill 2070 is about saving lives of people so that they have the opportunity to reach their full potential and affect the communities where they live in a positive manner. It sends a message to people who are struggling with drug and alcohol dependency that we care more about their lives than we do about keeping our jails full. Senate Bill 2070 will save lives in North Dakota and I urge you to support this bill. Thank you for your time and consideration.

②

#4
SB 2070
3-10-15

March 10, 2015

House Judicial Committee

Mr Chair and members of the House Judicial Committee, my name is Jenenne Guffey and I appreciate the opportunity to testify today as a Mom in support of SB 2070.

My son, Joshua Nelson died of a heroin overdose on July 26, 2013; he was only 21 years old. Josh made us smile with his witty personality. He was unwaveringly compassionate and people felt safe with him. He was fearless and curious. He loved to tell detailed stories about movies and books. His family and friends were important to him. The babies were always his favorite. He started talking about having many children at a very young age. At his funeral there was an entire picture board of him holding different babies throughout his short life.

In high school Josh was a promising wrestler; he loved snowboarding, playing hacky sack; and sports of all kinds. A few days before his death he told me he had decided to pursue a career that wouldn't take him away from his future family for long periods of time; he was considering construction management at MN State University Moorhead. He loved history and reading. The history channel became a favorite conversation piece between the two of us. In his last communications with his grandmother she had begun to share his family history back to the late 1800's. He told me he was "stoked" to have this information.

Anyone who met and spent time with Joshua enjoyed his company. He had the word *Loyalty* tattooed over his heart because that's what he believed in and how he lived. He was loyal to the end. Josh loved excitement and wanted to experience all this world had to offer. He did not have a death wish and he wanted to be free from addiction. His dependency on drugs began as "fun" and "social". In the end heroin took his life. Joshua attracted people from all walks of existence and he is not defined by his struggle with addiction. No one deserves to die when their life can be saved.

My son was in a public place with a group of friends, yet he died alone; 80% of heroin user's use with someone else; yet when they die of overdose 80% of them are found alone. His friends left him and did not report his condition until it was too late to save his life. They had no naloxone and their past revival techniques were not able to be performed in a public bathroom stall. Their fear of prosecution inhibited their ability to call for help. These are young people who now have to live with the death of someone they love on their hearts. These are young people that grew up together, not just a bunch of people without feelings or conscience.

Narcan/naloxone is not an opiate drug and it has no abuse potential. It is a safe and effective way of immediately reversing an opiate overdose. Because opiate overdose stops breathing, each second without air produces incremental brain damage until final death ensues. Therefore, every second that passes until an ambulance arrives costs precious brain tissue. Currently, in ND, only licensed medical providers and advanced life support services can use

(J)

naloxone. Placing naloxone in the hands of first responders, police, and the general public will increase response time and save lives. Multiple studies have shown, and I myself have taken the training, that it is easily administered by the lay public just as other medications such as epinephrine and glucagon are for severe allergic reactions or diabetic hypoglycemia.

Joshuah leaves behind a large family and many friends who love and miss him. We are committed to making his death mean something by giving all we have to advocating for policy/legislative change. We believe it's vital to legitimize regulation that grants limited immunity from prosecution to reporters of overdose victims and make naloxone/narcan available to those who need it. Let's work to ensure that no more families have to say good bye to those they love in this senseless fashion; let no more lives end before their time. Vote yes in support of SB 2070.

Thank you and I will be happy to answer any questions.

Jenene Guffey

A broken hearted mom

2

#1
SB2070
3-11-15

SB 2070

SECTION 1. A new section to chapter 19-03.1 of the North Dakota Century Code is created and enacted as follows:

Overdose prevention and immunity.

An individual is immune from criminal prosecution under sections 19 - 03.1 - 22.1 , 19 - 03.1 - 22.3, 19 - 03.1 - 22.5, subsection 7 of section 19 - 03.1 - 23, subsection 3 of section 19 - 03.2 - 03, and section 19 - 03.4 - 03 if that individual contacted law enforcement or emergency medical services and reported that the individual was or that another individual was in need of emergency medical assistance due to a drug overdose. To receive immunity under this section, **the States Attorney must find that the individual called EMS and or LE reporting that another individual he observed was suffering from a drug overdose and remained on the scene until assistance arrived and cooperated with emergency medical services and law enforcement personnel. If the individual calling EMS and or LE is the individual experiencing a drug overdose and was in need of medical assistance, the individual would not be liable for criminal prosecution under this section if the individual satisfactorily completed a drug evaluation after the event.** ~~If the individual receiving immunity must have remained on the scene until assistance arrived and cooperated with emergency medical services and law enforcement personnel in the medical treatment of the reported drug overdosed individual.~~ The maximum number of individuals that may be immune for any one occurrence is three individuals. Immunity from prosecution under this section is not applicable for a violation under section 19 - 03.1 - 23.1 .

#1
SB 2070
3-31-15

Proposed Amendments to SB 2070 from Representative Larson

Page 1, line 12, after the comma, insert "the state's attorney must find that"

Page 1, line 15, after "individual" insert "and that the overdosed individual was determined to have been in need of emergency medical services"

*line 13, words must have be
removed.*

(1)

PROPOSED AMENDMENTS TO SB 2070

Armstrong Amd.
4/13/15
1-1

1 A BILL for an Act to create and enact a new section to chapter 19-03.1 of the North Dakota
2 Century Code, relating to immunity from criminal liability for an individual who reports a
3 medical emergency involving drugs.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 19-03.1 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Overdose prevention and immunity.**

8 An individual is immune from criminal prosecution under sections 19 - 03.1 - 22.1 , 19 - 03.1
9 - 22.3, 19 - 03.1 - 22.5, subsection 7 of section 19 - 03.1 - 23, subsection 3 of section 19 -
10 03.2 - 03, and section 19 - 03.4 - 03 if that individual contacted law enforcement or
11 emergency medical services and reported that the individual was or that another individual
12 was in need of emergency medical assistance due to a drug overdose. To receive immunity
13 under this section, the individual receiving immunity must have remained on the scene until
14 assistance arrived and cooperated with emergency medical services and law enforcement
15 personnel in the medical treatment of the reported drug overdosed individual and that the
16 over dosed individual was determined to have been in need of emergency medical services
17 . The maximum number of individuals that may be immune for any one occurrence is three
18 individuals. Immunity from prosecution under this section is not applicable for a violation
19 under section 19 - 03.1 - 23.1 .