

FISCAL NOTE
Requested by Legislative Council
01/08/2015

Bill/Resolution No.: SB 2156

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Amends NDCC 12.1-32-02.1 to include AA felony level offenses in the mandatory prison term for armed offenders, which would be four years. AA felony level was not previously in statute. No material fiscal impact.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Based on the prison sentences between 1/1/08 and 12/31/12 there were 242 AA felony offenses sentenced to prison in that five year period of time, which accounted for 2% of the overall sentences during that period of time. The average sentence (not including the life sentences) was 9 years in prison. Based on this information, it is believed SB 2156 will not have a material fiscal impact due to the fact that on average defendants who commit AA felony level offenses are sentenced to longer periods of incarceration than the 4 years that would be required by this measure.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

n/a

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

n/a

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

n/a

Name: Dave Krabbenhoft

Agency: DOCR

Telephone: 328-6135

Date Prepared: 01/14/2015

2015 SENATE JUDICIARY

SB 2156

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2156
1/20/2015
22195

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Minutes:

Ch. Hogue: We will open the hearing on SB 2156.

Sen. Armstrong: Sponsor, explained the bill. This is clean up language in the armed offender statute to provide clarity in the law.

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

Aaron Birst, ND Association of Counties: Support. We actually asked Senator if he would be interested in sponsoring this bill and he did. I don't anticipate any controversy on this. First, if you look at line 15, right after "possession of marijuana, there should be a number 6, that should be overstruck and number 7 is correct but that is the new language, so #7 should be underlined. That is the crux of why we brought the bill forward. I had a number of states' attorneys contact me this summer. They were reading the law and they said subsection 6 was put in last session and in subsection 6 of 19-03.1-23 applies to internet middlemen who provide essentially pharmaceutical drugs that are not prescribed. It makes no sense to the prosecutors nor to me why internet middlemen drug folks would have the armed offender statute apply to them. When I looked back and did further research it appears that subsection 7 is what that was supposed to apply to in the NDCC, it actually is the offender/drug dealers who are on school property grounds. That's where it always used to be. I think it was a drafting error and so once we were looking at that, we thought there should be a couple of other clean-ups. You really need to look at the statute beforehand. It's one big statute. We simply are suggesting with #1, breaking A and B down. The language is the same but two separate sections so everybody can understand. The other change which is policy driven is subsection 2, line 19, we inserted a class AA. The drug dealer section, which is the 19-03.1-23 (1) and (2) is the drug dealer provision and there is a class AA for drug dealing.

We inserted that. Finally you might have questions about why we struck out the "except for simple possession of marijuana", that was inserted back in 1997; Sen. Lyson was the prime sponsor on that. We struck that because there is no way to have simple possession of marijuana under the section 1 and 2 of 19-03.1-23, section 1 and 2 again I will refer to as the drug dealer section, when you are manufacturing and delivering drugs. It didn't make sense. I can't take credit for that because I was not here at the time. We still preserve that you can't be subjected to armed offender statutes if you are a misdemeanor; that the reason for the felony language in there.

Ch. Hogue: You are going to be submitting technical corrections to the bill.

Aaron Birst: The technical correction doesn't necessarily need an amendment; it's just the way LC ended up drafting it. But I wanted the committee to be sure they understood #7 on line 15, that is new language, it is not existing language, as it's drafted now it appears like it is existing language. The existing language is subsection 6. Subsection 6 should be deleted and subsection 7 should be underlined on line 15.

Ch. Hogue: Please work with the intern to make sure that this is taken care of. Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2156
1/20/2015
22227

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Penrose

Minutes:

#1

Ch. Hogue: Mr. Birst said that this was some clean-up language, but then the clean-up needed some more clean-up amendments. (#1)

Sen. C. Nelson: I move the amendment.

Sen. Grabinger: Second the motion.

VOICE VOTE - CARRIED

Sen. C. Nelson: I move a Do Pass as amended.

Sen. Grabinger: Second the motion.

6 YES 0 NO 0 ABSENT
DO PASS AS AMENDED

CARRIER: ARMSTRONG

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2156
1/27/2015
22593

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Minutes:

Ch. Hogue: We had a Do Pass as amended on this bill. The amendment was offered and we had assigned a carrier. The amendment was offered by Aaron Birst, of the ND Assoc. of Counties. We had Mr. Dawson, from Legislative Council, review that amendment and he gave us his opinion that the amendment is unnecessary, we deferred to his judgment.

Sen. C. Nelson: Which amendment are you talking about. We had one where it just overstruck (6) to make it (7). Was it a technical correction.

Ch. Hogue: The one that Mr. Birst proposed that overstruck on page 1, line 15, the word "marijuana" and insert and overstrike (6), insert immediately after the number (7). Mr. Birst presented it to us as a technical correction; however, Mr. Dawson said it wasn't needed. What are the committee's wishes.

Sen. Armstrong: I move that we reconsider our action on SB 2156 by which we had adopted the amendment.

Sen. Casper: I second the motion.

Ch. Hogue: Voice vote, motion carried. We now have the bill before us.

Sen. Armstrong: I move a Do Pass.

Sen. C. Nelson: I second the motion.

6 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Sen. Armstrong

15.0640.01001
Title.02000

Adopted by the Judiciary Committee

January 20, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2156

Page 1, line 15, after the stricken comma insert "6"

Page 1, line 15, underscore "7"

Renumber accordingly

Date: 1/20/15
Voice Vote # 1

2015 SENATE STANDING COMMITTEE
VOICE VOTE
BILL/RESOLUTION NO. 2156

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 15.0640.01001 / 02000

Recommendation: ☒ Adopt Amendment

☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☐ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Seconded By

Motion Made By Sen. Nelson Sen. Grabinger

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

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Armstrong

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

Date: 1/20/15

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 2156

Senate JUDICIARY Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Nelson Seconded By Sen. Grabinger

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

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Armstrong

Date: 4/27/15
Voice Vote # 1

2015 SENATE STANDING COMMITTEE
VOICE VOTE
BILL/RESOLUTION NO. 2156

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☒ Reconsider Action ☐ _____

Seconded By

Motion Made By Sen. Armstrong Sen. Casper

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

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Voice Vote: Carried

Date: 1/27/15
Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 2156

Senate

JUDICIARY

Committee

☐ Subcommittee

Amendment LC# or Description: _____

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

Motion Made By Sen. Armstrong Seconded By Sen. Nelson

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

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Armstrong

REPORT OF STANDING COMMITTEE

SB 2156: Judiciary Committee (Sen. Hogue, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2156 was placed on the
Eleventh order on the calendar.

2015 HOUSE JUDICIARY

SB 2156

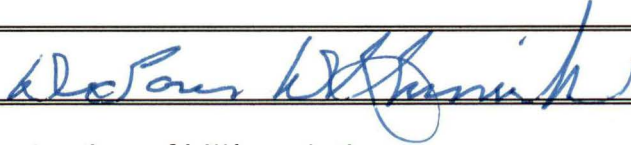
2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2156
3/16/2015
24896

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to mandatory sentences for armed offenders.

Minutes:

Testimony #1

Chairman K. Koppelman: Opened the hearing on SB 2156.

Rep. Armstrong: Introduced the bill. It is a cleanup bill. Clarifying what the armed offender's statute says. We are just clarifying what the armed offender's statute says. In subsection b it is the offender and any felony because that is when it applies. States Attorneys asked me to submit this. (See Testimony #1) from Aaron Burst. There are no policy changes.

Chairman K. Koppelman: This is a cleanup bill with not substant changes.

Rep. Armstrong: Yes that is right. For the violent crimes it is all felony.

Rep. K. Wallman: On page 1 when it is broken up into subsection b; it refers to 19-03.1-23 subsection 1, 2, & 7. Those are all referring to felonies; is that right?

Rep. Armstrong: Yes

Chairman K. Koppelman: This section has to do with imprison without parole.

Rep. Armstrong: Yes it is general sentence enhancement for being an armed offender.

Opposition: None

Neutral: None

Hearing closed.

Do Pass Motion Made by Rep. K. Hawken: Seconded by Rep. Lois Delmore:

House Judiciary Committee
SB 2156
March 16, 2015
Page 2

Discussion: None

Roll Call vote: 13 Yes 0 No 0 Absent Carrier: Rep. Brabandt:

Date: 3-16-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 5B2156

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. Humphreys

Seconded By

Rep. Delmore

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. Brabandt

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

REPORT OF STANDING COMMITTEE

SB 2156: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2156 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

SB 2156

#1

15.0640.01001
Title.02000

Adopted by the Judiciary Committee

January 20, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2156

Page 1, line 15, after the stricken comma insert "6"

Page 1, line 15, underscore "7"

Renumber accordingly

L.C. never prepared
Amendment - S Bill 2156
was brought back to Comm. to
remove Amendment. Was D Pass
on 1/27/15

711
SB 2156
3-16-15

Testimony to the: HOUSE JUDICIARY
Prepared March 16, 2015 by the North Dakota Association of Counties
Aaron Birst, Legal Counsel

CONCERNING SB 2156

Chairman Koppelman and members of the committee, SB 2156 is essentially a technical restructuring bill. Early last summer a number of prosecutors realized NDCC 12.1-32-02.1 contained a number of run on sentences and items that no longer made common sense.

For example, under the current law, two separate concepts are contained in the first paragraph. Originally, the Armed Offender statute applied to violent crime while armed but it was later amended to also include being armed while violating certain subsections of NDCC 19-03.1-23. 1. The subsections referenced in 19-03.1-23.1 are what can be called drug manufacture or dealer provisions. However, as this committee can see, the wording of the section is incredibly confusing when read all together. That is the reason for the suggested change. Under SB 2156 these separate concepts are broken down for clarity.

Additionally, as you can see "simple possession of marijuana" is also being removed but that is not meant to include Marijuana offenses in the armed offender statute. That phrase is being removed because it makes no legal sense. Under the subsections (listed in current law) it is legally impossible for simple possession of marijuana to be included. Again that is because the subsections listed 1, 2 and 7 refer to manufacture and delivery of drugs and not simple possession crimes. Although there might have been a time this made sense it no longer does under the current laws in place.

Finally, the last change that has been included is adding AA Felonies. This was simply added because there are drug dealing crimes that can be AA felony level. The current law allowed the enhanced penalties for A felony but did not include the AA felony crimes. Again this made no common sense as AA felonies are actually a higher level of crime then a A felony. Meaning if there was an enhancement for the lower level there should probably be included the higher level crime.

As I mentioned this bill is more of a clean-up then a substantive legal change and it will simply add clarity of reading. We ask for a do pass and thank you.