

1999 SENATE JUDICIARY

SB 2210

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2210

Senate Judiciary Committee

Conference Committee

Hearing Date January 19, 1999

Tape Number	Side A	Side B	Meter #
1		x	4715 - end
2	x		0 - 1652
2-2-99 2		x	0 - 519
Committee Clerk Signature <i>Jackie Follmon</i>			

Minutes:

SB2210 relates to the grading of offenses for certain crimes.

SENATOR STENEHJEM opened the hearing on SB2210 at 11:15 A.M.

All were present.

LONNIE OLSON, Ramsey County States Attorney, testified in support of SB2210. The bill draft of SB2210 amends the theft statute and forgery statute. I feel we need to make some inflation adjustments.

SENATOR STENEHJEM asked if you are aware of anyone who is arrested on an offense of \$500 to \$1000 theft who gets over a year in jail.

LONNIE OLSON stated he sees Judges adjusting down or someone who has a large record, then they will jump on them but not very often.

WARREN EMMER, Department of Corrections, testified about the ramifications and support of SB2210. Testimony attached.

SENATOR LYSON stated that everyone is talking about inflation. We are not talking about the poor. I think this is poor legislation. I think we are sending a bad message out there.

WARREN EMMER stated he didn't think you will see less restitution collected.

SENATOR LYSON asked what the percentage of restitution collected.

WARREN EMMER stated that 3 sessions ago \$400,000, right now it is \$1.6 million. About 70 - 80% of orders by Court.

SENATOR LYSON asked what is percentage being paid not on supervised probation.

WARREN EMMER stated that unsupervised probation is gone.

TAPE 2, SIDE A

SENATOR STENEHJEM asked about first time offenders who fall in the \$500 to \$1000 range and get over a year.

WARREN EMMER stated that he thinks there are some, I will have to get that information.

SENATOR NELSON asked about the Restitution Programs and Community Service.

WARREN EMMER explained these programs.

SENATOR WATNE asked how the perimeters of the law have changed. Will they have sentences lightened.

WARREN EMMER stated that he didn't believe so. The parole board may take a second look based on the changes in the law. I don't believe this law will have any change on our Field Services.

SENATOR STENEHJEM asked if he could find out what happened in 1981 when there were changes made.

WARREN EMMER stated that it was just adjusting crimes based on inflation.

DOUG MATTSON, Ward County States Attorney, testified in opposition of SB2210. I feel this may be a bill of more frustration. I feel this is the wrong approach.

RON NESS, North Dakota Retailers Association, testified in opposition to SB2210. Shoplifting has increased, businesses lost \$38 billion last year. 1 in 10 people shoplift at an \$85 average amount. We feel this is sending the wrong message.

SENATOR STENEHJEM feels that a third offender should be sentenced with a harder penalty.

SENATOR STENEHJEM CLOSED the hearing on SB2210.

FEBRUARY 2, 1999 TAPE 2, SIDE B

SENATOR TRAYNOR proposed amendments.

SENATOR LYSON stated that Bob Armstrong with the Governor's Office is concerned with these amendments.

SENATOR STENEHJEM said he would discuss this with Bob Armstrong.

Discussion.

SENATOR WATNE made a motion on Amendments, SENATOR LYSON seconded. Motion carried.

Discussion.

SENATOR WATNE made a motion for DO PASS AS AMENDED, SENATOR LYSON

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Senate Judiciary Committee
Bill/Resolution Number SB2210
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seconded. Motion carried.

SENATOR TRAYNOR will carry this bill.

5 - 1 - 0

Proposed amendment to SB2210

Line 14 after the word "second" overstrike the words "~~or subsequent~~"

Line 14 after the word "chapter" insert "or regardless of the dollar value and the theft is a third or subsequent offense under this chapter"

90431.0101
Title.

Prepared by the Legislative Council staff for
Senator Traynor
January 27, 1999

PROPOSED AMENDMENTS TO SENATE BILL NO. 2210

Page 1, line 13, after "value" insert "and the theft is a first offense under this chapter or five hundred dollars in value and the theft is a second or subsequent offense under this chapter"

Renumber accordingly

Date: 2-2-99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2210

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AS Amended

Motion Made By Watne Seconded By Lyson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Caroloyne Nelson		X			

Total (Yes) 5 No 1

Absent 0

Floor Assignment Traynor

REPORT OF STANDING COMMITTEE

SB 2210: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2210 was placed on the Sixth order on the calendar.

Page 1, line 13, after "value" insert "and the theft is a first offense under this chapter or five hundred dollars in value and the theft is a second or subsequent offense under this chapter"

Renumber accordingly

1999 HOUSE JUDICIARY

SB 2210

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1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2210

House Judiciary Committee

Conference Committee

Hearing Date : March 2, 1999

Tape Number	Side A	Side B	Meter #
2		X	12.6
Committee Clerk Signature <i>Olga Jindberg</i>			

Minutes:

RICHARD SCHUCHART appeared for WARREN EMMER and presented his written testimony, a copy of which is attached.

RON NESS presented written testimony, a copy of which is attached.

DICK PECK (NDPOA) We would like to see the amounts lowered some. Shoplifting is very easy and the penalties should be increased.

FRANK MUSCATO (Walmart) Presented written testimony, a copy of which is attached.

COMMITTEE ACTION: March 9, 1999

REP. MAHONEY moved that the committee recommend that the bill DO NOT PASS. Rep.

Koppelman seconded and the motion passed on a roll call vote with 14 ayes, 0 nays and 1 absent.

Rep. Mahoney was assigned to carry the bill.

Date: 3/9/89
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2210

House JUDICIARY Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do NOT pass case amended

Motion Made By Mahoney Seconded By Koppelman

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH	✓	
REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN	✓	
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD	✓		REP. MARAGOS		
REP. GORDER	✓		REP. MEYER	✓	
REP. GUNTER	✓		REP. SVEEN	✓	
REP. HAWKEN	✓				

Total Yes 14 No 0

Absent 1

Floor Assignment Mahoney

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

REPORT OF STANDING COMMITTEE (410)
March 11, 1999 10:48 a.m.

Module No: HR-44-4525
Carrier: Mahoney
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2210, as engrossed: **Judiciary Committee (Rep. DeKrey, Chairman)** recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2210 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

SB 2210

**Senate Judiciary Committee
Wayne Stenehjem, Chairman
January 19, 1999**

**Warren R. Emmer, Director
Department of Corrections
Field Services Division
Testimony in Support of SB 2210**

- ❖ The Department has reviewed SB2210 and finds the following:
 - 1) The penitentiary has 89 forgery cases
 - A) 86 Felonies
 - B) 3 "A" Misdemeanors
 - 2) The penitentiary has 243 theft of property/ service cases
 - A) 219 Felonies
 - B) 24 "A" Misdemeanors
 - 3) The field services division has 317 forgery cases
 - A) 296 Felonies
 - B) 21 "A" Misdemeanors
 - 4) The field services division has 1347 theft of property/ service cases
 - A) 1306 Felonies
 - B) 41 "A" Misdemeanors

- ❖ The Department believes that there may be a significant number of inmates and probation cases impacted by SB2210. This belief is based on our reviewing approximately 20% of our active field cases. Our findings are as follows:
 - 1) Theft by Deception and Forgery cases would drop in offense class (Approximately 5%)
 - 2) Theft of Property/Services would see a large drop in offense class
 - A) 26% of felonies become "A" Misdemeanors
 - B) 44% of "A" Misdemeanors become "B" Misdemeanors



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SB 2210

House Judiciary Committee

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TRACY SIPMA
COUNTRY GENERAL STORE, BIRKINSON

RYAN THOMPSON
INDIX CYCLE, MANDAN

Mr. Chairman and members of the committee my name is Ron Ness, I am the President of the ND Retail Association. I appear before you in opposition to SB2210.

Retail theft is a serious issue – steps must be taken to put a stop to this problem. The amount of organized theft has outgrown retailers ability to address the problem. It's time to send a message to criminals. This bill is a move in the wrong direction.

This bill is being labeled as an adjustment for inflation. However, the value of regularly stolen goods has actually decreased in recent years. If this bill passes a thief will have to steal more electronics, video games, or other commonly stolen items to receive the same level of penalty as the current law allows.

RETAIL THEFT INFO:

- Businesses lose more than 38 billion a year to shoplifters and employee theft.
- One ND retailer estimates 4.4 million in losses per year to shoplifting and employee theft.
- ND has lost many retail businesses in recent years and theft is a factor in those business closings.
- 1/10th of customers shoplift
- Organized theft professionals steal 50 – 200 times before getting caught.
- 75% of shoplifters are adults.
- Average value of a stolen item is \$85.00. The price of commonly shoplifted items has gone down in the past ten years.
- Repeat offenders must pay the price.

We need to get tough on crime and send a message that shoplifters will be prosecuted. SB2210 sends the opposite message. Retailers urge a do not pass recommendation on this bill.

Thank you, I would be happy to answer any questions.

Third Theft Felony Legislation
By Frank Muscato

Honorable Chair and Members of the Committee:

My name is Frank Muscato and I currently work in special investigations regarding retail theft and the sale of stolen merchandise. I work closely with several retail organizations, as well as federal, state, and local law enforcement officials all across the country. My purpose here today is to give you some background on this issue and to express my concern with raising the felony amount for theft in North Dakota.

The Shoplifter:

These people steal for their own personal use. They take food, clothing, etc.

Professional Retail Thief (Booster):

Boosters sometimes wear special clothing and steal large numbers of the same product. They take orders on product to be stolen, and will travel from city to city, state to state to commit the thefts. Most of these boosters are supporting a narcotics habit. Many boosters work in groups of three or four and commit theft by shelf-sweeping, UPC switches, box stuffing, walk-outs, two-for-one receipts, or bogus receipt returns, among many other methods of theft. Most of these boosters can completely clear a shelf in a matter of seconds.

Generally speaking, a person who is stealing over \$200 worth of product is stealing that product to move through a fence, or to do a bogus receipt return.

FBI Statistics:

We estimate 2 cents on every dollar a consumer spends goes to cover theft. The FBI estimates 4 cents on the dollar, and that figure is rapidly increasing. I'd like to read an excerpt from the *INTERSTATE FENCING STRATEGIC INITIATIVE CONFERENCE, FEBRUARY 1997.*

“The retail industry representatives indicated that U.S. grocery chains work approximately ten months out of the year to support their losses due to theft. The last two months of annual sales go toward corporate profit. The drug and discount industry works six months out of the year to support their losses from theft.

To further illustrate this, according to the FBI account, in the past five years, 50% of the retail businesses in the U.S. have gone out of business. The main cause of these store closings is “shrinkage” (theft and fraud). The retail industry representatives estimated that in the next five years, another 50% of the remaining U.S.-owned retail chains would go out of business because of theft. The retail industry provides millions of jobs to Americans and provides a significant portion of U.S. tax revenue. With the loss of these companies, the effect on the American economy is disastrous. The overall retail industry in the U.S. accounted for \$2.2 trillion in sales in 1995. Of that amount, the retail drug stores, food/drug grocery stores, and large discount chains represented \$787 billion in sales, or approximately 64% of the overall retail industry. Retail representatives conservatively estimate that grocery, drug and discount chains suffered approximately 4% in losses due to theft in 1996. Based upon those figures, these retail businesses experienced \$31.5 billion in losses due to theft in 1996.”

Increasing Felony Theft from \$500 to \$1000:

By increasing the amount of felony theft from \$500 to \$1000 simply allows boosters to steal twice as much with less risk. The problem retail has is theft from retail establishments is high profit, low risk. Subjects who commits a burglary and steal a tv, VCR and video camera and take that to a fence, will get about \$100 for the property (and that property is normally traceable). They have committed a felony. The same subjects can go to retail store and steal two tv's, a VCR and a video camera, take that to a fence and get \$300-\$400 for that property. If this group were caught during the theft, under this bill, they would have committed a misdemeanor. The amendments to this bill would provide that the second theft would be a felony if over \$500, and

the third theft, regardless of amount, would be a felony. This amendment would provide law enforcement and retail a valuable tool to work with on repeat offenses. Our company alone last year apprehended over 150,000 individuals involved in theft.

Conclusion:

In Minnesota, theft over \$500 is a felony for the first offense, and over \$200 for 2nd or subsequent offenses. In South Dakota, theft over \$500 is a felony. In Nebraska, theft over \$500 is a felony for the first offense. In Montana, theft over \$500 is a felony. If you were a booster, which state would you steal in?

Thank you for your time. I will be happy to answer any questions you may have.