

2009 SENATE JUDICIARY

7  
SB 2115

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2115

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 12, 2009

Recorder Job Number: 6822

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

**Relating to sentencing alternatives and possession of firearms.**

**Charles Placek** – Director of Administrative Services – See written testimony. Provides a proposed amendment – recommends a do pass.

**Senator Nething** – Asks what provision we are changing.

**Placek** – Responds by explaining felony charges dropped to a misdemeanor when probation is successfully completed. The problem is the Interstate Compact only allows for the transfer of four offenses based driven misdemeanors. He said in discussing with interested parties across the state, a number of people indicated they liked the provisions and understood our problem with the Compact transfer and basically said they liked the way it was prior to 2001, providing the incentive of “keeping your nose clean” you can have it reduced to a misdemeanor upon successful completion.

**Senator Nething** – For clarity purposes, the amendment takes us back to keep it to a felony until the sentence is completed and then can be put on that person’s record as a misdemeanor. And that will still qualify for the compact opportunities for the individual.

**Senator Fiebiger** – Asks how often an offender leaves the state.

**Placek** – Explains the four misdemeanor offenses: crimes of violence, subsequent DUI, crimes using firearms, or a misdemeanor sex offense that requires the offender to register in the sending state.

**Placek** – Explains the Interstate Compact and the cooperation of all 50 states.

**Arron Birst** – Association of Counties – Supports the bill if this amendment is accepted.

**Arlene Dura** – Director of the Supplemental Nutrition Assistance Program – written testimony.

**Senator Nething** – Asks if this amendment helps.

**Dura** – Says it would be hard to keep track of eligibility for families receiving food stamps.

Under current law individuals sentenced to 365 days or less are eligible but 1 day over that makes them ineligible.

**Senator Nething** – It is not our intent to change the eligibility. Dura confirms it is federal law.

Discussion continues on who is eligible for food stamp benefits.

**Dura** – Says there is a provision in the Federal law that allows a state can legislatively opt out of a Federal law. This means they would not look at felonies to make participants ineligible.

**Senator Lyson** – Asks if a state can opt out for only a portion of the Federal bill.

**Carol Karty** – Director of Public Assistance – Her understanding is its all or nothing.

Discussion on the amendment.

**Kent Sorenson** – Attorney General's office – Drug offenses are still felony offenses. This bill will not change that.

Close hearing on 2115

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2115

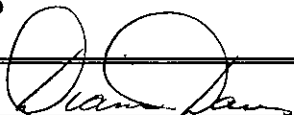
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/26/09

Recorder Job Number: 7746

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work

Discussion, Senator Lyson said he talked with the person from Human Services and found out that the whole family doesn't not get food stamps, just the felon does not get them.

He states the important thing about this bill if we don't change it and leave it as a felony until then end of the probationary period, these people that are being convicted now and given probation are going to have to remain in ND because other states under the new Interstate Compact will not accept a misdemeanor under supervision. Even if they want to go home and work they wouldn't be able to. To change it to a felony and keep it a felony until the probationary period has been completed it goes to a misdemeanor. During that time a person could be out of state. He can go to another state immediately. Senator Fiebiger said he visited with some defense attorney's in the state and they said they were fine with the proposed amendment.

Senator Fiebiger moves pass on the amendment, seconded Senator Nelson

Verbal pass, all yes

Senator Fiebiger moves do pass on the amended bill, Senator Schneider seconds.

Vote 6 yes, 0 no, Senator Fiebiger will carry

Date: 1/26/09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

SB 215

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Sen. Fiebiger Seconded By Sen. Schneider

| Senators                        | Yes | No | Senators            | Yes | No |
|---------------------------------|-----|----|---------------------|-----|----|
| Sen. Dave Nething - Chairman    | X   |    | Sen. Tom Fiebiger   | X   |    |
| Sen. Curtis Olafson - V. Chair. | X   |    | Sen. Carolyn Nelson | X   |    |
| Sen. Stanley W. Lyson           | X   |    | Sen. Mac Schneider  | X   |    |
|                                 |     |    |                     |     |    |
|                                 |     |    |                     |     |    |
|                                 |     |    |                     |     |    |
|                                 |     |    |                     |     |    |
|                                 |     |    |                     |     |    |
|                                 |     |    |                     |     |    |
|                                 |     |    |                     |     |    |

Total (Yes) 6 (N) 0

Absent \_\_\_\_\_

Floor Assignment Sen. Fiebiger

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

Amendment - Verbal pass

**REPORT OF STANDING COMMITTEE**

**SB 2115: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2115 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "and subsection 2 of section"

Page 1, line 2, remove "62.1-02-01" and remove "and"

Page 1, line 3, remove "possession of firearms"

Page 3, line 17, after the first "a" insert "A" and remove the overstrike over "~~person who is convicted of a felony~~"

Page 3, remove the overstrike over line 18

Page 3, line 19, remove the overstrike over "~~been convicted of a misdemeanor~~" and after the second "a" insert "upon successful completion of the term of imprisonment and a term of"

Page 3, line 20, remove the overstrike over "~~probation imposed as part of the sentence~~"

Page 3, line 21, remove the overstrike over "~~. This subsection does not apply to a person convicted of~~"

Page 3, remove the overstrike over line 22

Page 3, line 23, remove the overstrike over "~~10.~~"

Page 3, line 30, remove the overstrike over "~~11.~~" and remove "10."

Page 4, remove lines 15 through 31

Page 5, remove lines 1 through 3

Renumber accordingly

2009 HOUSE JUDICIARY

SB 2115

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2115

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/3/09

Recorder Job Number: 10073

Committee Clerk Signature

*Delmore*

Minutes:

**Chairman DeKrey:** We will open the hearing on SB 2115.

**Charles Placek, Deputy Director of Administrative Services, Adult Services Division,  
Department of Corrections:** Support (attachment).

**Rep. Delmore:** Can you tell me what the effect is on the money that the Governor gets for domestic violence...(can't hear)...for prevention, is it already pulled back to a misdemeanor will allow them to get back their weapons.

**Charles Placek:** I don't think I can answer that question directly. I'm aware of the situation; if the person is on supervision, whether for misdemeanor or felony, they are barred from possessing firearms. This particular change that I'm requesting we support basically came about because of the new Interstate Compact for Supervision. Right now a misdemeanor, a receiving state does not need to accept certain people.

**Rep. Griffin:** If we pass this bill, there are going to be a lot of people are going to have a felony on their record for a substantially long period or longer period than currently used, is that worth it, to be part of the passage of the Compact.

**Charles Placek:** The DOCR is asking the House is actually return to the language that was in place for several years until it was changed a few years ago, where the person that was



charged, convicted or pleads to a felony, and sentenced to a year or less, will be there until they successfully complete their sentence or their probation period. If they successfully complete their sentence, it drops to a misdemeanor. Specifically it drops probation to two years, during those two years they would be a felon while they are on supervision. If they successfully complete that probation time, it drops to a misdemeanor.

**Rep. Griffin:** I understand that, we will extend the length of time that the defendant is considered a felon. How much of a problem is it for the Compact.

**Charles Placek:** An example would be a possession of drug paraphernalia charge. Our sentence in ND is one year in DOCR, suspended for two or three years. That type of sentence of one year, assuming the judge sentenced him for his supervision, if you get there later or both, then it's elevated back up to a felony. This bill would change it back to the way it used to be in ND, if the person successfully completes their supervision, then it drops down to misdemeanor.

**Rep. Griffin:** How big a problem is this with individuals that their felonies are being B misdemeanors. Is it 100 defendants a year or 5 defendants a year.

**Charles Placek:** I can get you the actual numbers, I believe it could be several hundreds. It is a very common sentencing procedure, especially, unless you had a very extensive record, to see this kind of a suspended sentence.

**Rep. Griffin:** I know that there are many people, how many want to transfer probation.

**Charles Placek:** I know it's been a problem ever since we adopted the new Compact in 2002.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2115

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/4/09

Recorder Job Number: 10178

Committee Clerk Signature

*Penrose*

Minutes:

**Ch. DeKrey:** We will take a look at SB 2115. What are the committee's wishes in regard to SB 2115.

**Rep. Delmore:** I move a Do Pass.

**Rep. Wolf:** Second.

**13 YES 0 NO 0 ABSENT**

**DO PASS**

**CARRIER: Rep. Griffin**

Date: 3/4/09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2115

**HOUSE JUDICIARY COMMITTEE**

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  DP  DNP  DP AS AMEND  DNP AS AMEND

Motion Made By Rep. Delmore Seconded By Rep. Wolf

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------|-----|----|-----------------|-----|----|
| Ch. DeKrey      | ✓   |    | Rep. Delmore    | ✓   |    |
| Rep. Klemin     | ✓   |    | Rep. Griffin    | ✓   |    |
| Rep. Boehning   | ✓   |    | Rep. Vig        | ✓   |    |
| Rep. Dahl       | ✓   |    | Rep. Wolf       | ✓   |    |
| Rep. Hatlestad  | ✓   |    | Rep. Zaiser     | ✓   |    |
| Rep. Kingsbury  | ✓   |    |                 |     |    |
| Rep. Koppelman  | ✓   |    |                 |     |    |
| Rep. Kretschmar | ✓   |    |                 |     |    |
|                 |     |    |                 |     |    |
|                 |     |    |                 |     |    |
|                 |     |    |                 |     |    |
|                 |     |    |                 |     |    |
|                 |     |    |                 |     |    |
|                 |     |    |                 |     |    |
|                 |     |    |                 |     |    |
|                 |     |    |                 |     |    |

Total (Yes) 13 No 0

Absent 0

Floor Carrier: Rep. Griffin

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

**REPORT OF STANDING COMMITTEE (410)**  
March 4, 2009 3:23 p.m.

**Module No: HR-39-4055**  
**Carrier: Griffin**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2115, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2115 was placed on the Fourteenth order on the calendar.**

2009 TESTIMONY

SB 2115

**Senate Judiciary Committee  
Dave Nething, Chairman  
January 12<sup>th</sup>, 2008**

**Charles R. Placek,  
Deputy Director of Administrative Services  
Adult Services Division  
Department of Corrections  
Presenting Testimony Re: SB 2115**

---

The DOCR wishes to submit an amendment to our originally pre-filed bill. The pre-filed bill removes language from 12.1-32-02 (9) relating to the reduction of a felony to a misdemeanor if the offender is sentenced to a no more than a year. In discussions with other interested parties the DOCR feels the amendment would solve our current Interstate Compact transfer problem and allow those offenders that successfully complete their sentence or probation to have their felony reduced to a misdemeanor.

The current status of 12.1-32-02 (9) provides that a person convicted of a felony offense and is sentenced to imprisonment for no more than one year is deemed to have been convicted of a misdemeanor. If that offender's probation is revoked, they are be deemed to be convicted of felony. This provision causes significant problems in the supervision of offenders to whom this provision applies, particularly when dealing with the Interstate Compact for Adult Offender Supervision. The moment the judge sentences a person on a felony charge to less than one year, they are deemed a misdemeanant, not a felon. The person is still subject to supervision by the DOCR. If the person is seeking to have supervision transferred under the Compact, the receiving state does not have to take misdemeanants for a number of criminal offenses. The offender, who may reside, work, etc in another state, may not be able to leave ND because of the inability for ND DOCR to have him supervised. Previously, this provision required the offender to successfully complete the period of supervision before the offense was deemed a misdemeanor. It actually served as an incentive for the offender to successfully complete probation. Record-keeping ease for BCI was the reason for the change to the current language in the statute. Record-keeping convenience should not trump public safety.

The DOCR asked that this committee adopt our suggested amendment to SB 2115. With the suggested changes to 12.1-3202 (9) all offender's charged with a felony and sentenced in North Dakota to one year or less would be subject to the services offer by the Interstate Compact for Adult Offender Supervision.

**PROPOSED AMENDMENT**

Page 1, Line 1, remove "and subsection 2 of section"

Page 1, Line 2, remove "62.1-02-01" and "and"

Page 1, Line 3, remove "possession of firearms"

Page 3, Line 21, after "~~felony.~~", insert "A person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor upon successful completion of the term of imprisonment and term of probation imposed as part of the sentence." and remove the overstrike over ~~This subsection does not apply to a person convicted of~~

Page 3, Line 22, remove the overstrike over "~~violating subdivision a, b, or c of subsection 1 of section 19-03.1-23.~~"

Page 3, Line 23, remove the overstrike of "10."

Page 3, line 30, remove the overstrike over "11." and remove "10."

Page 4, remove lines 15-31

Page 5, remove lines 1-3

Renumber accordingly

**Testimony**  
**Senate Bill 2115 – Department of Human Services**  
**Senate Judiciary Committee**  
**Senator David Nething, Chairman**  
**January 12, 2009**

Chairman Nething, members of the Senate Judiciary Committee, I am Arlene Dura, Director of the Supplemental Nutrition Assistance Program (formerly known as the Food Stamp Program) of the Department of Human Services. I am here today to provide you with information on the impact of SB 2115.

Current federal law requires that an individual convicted of a felony for possession, use, or distribution of illegal drugs is permanently ineligible to participate in both the Supplemental Nutrition Assistance (SNAP) and Temporary Assistance to Needy Family Programs (TANF) when the act occurred after August 22, 1996.

The potential impact of this bill to SNAP households would result in an average of 90 individuals being ineligible for food assistance benefits or receiving a reduced benefit. This means that households containing these individuals would see a reduction in benefits of approximately \$96 per month or the household may no longer be eligible if household assets exceed \$2,000 per month.

The potential impact of this bill for TANF families would result in approximately 14 families being ineligible for benefits or receiving a



reduced benefit. For example, a family with one adult and two children would receive a reduced benefit of \$238, a reduction of \$179 monthly.

This concludes my testimony. I would be happy to answer any questions.

**House Judiciary Committee  
Duane DeKrey, Chairman  
March 3<sup>rd</sup>, 2009**

**Charles R. Placek,  
Deputy Director of Administrative Services  
Adult Services Division  
Department of Corrections  
Presenting Testimony Re: Engrossed SB 2115**

---

The current status of 12.1-32-02 (9) provides that a person convicted of a felony offense and is sentenced to imprisonment for no more than one year is deemed to have been convicted of a misdemeanor. If that offender's probation is revoked, they are be deemed to be convicted of felony. This provision causes significant problems in the supervision of offenders to whom this provision applies, particularly when dealing with the Interstate Compact for Adult Offender Supervision. The moment the judge sentences a person on a felony charge to less than one year, they are deemed a misdemeanor, not a felon. The person is still subject to supervision by the DOCR. If the person is seeking to have supervision transferred under the Compact, the receiving state does not have to take misdemeanants for a number of criminal offenses. The offender, who may reside, work, etc in another state, may not be able to leave ND because of the inability for ND DOCR to have him supervised. Previously, this provision required the offender to successfully complete the period of supervision before the offense was deemed a misdemeanor. It actually served as an incentive for the offender to successfully complete probation. Record-keeping ease for BCI was the reason for the change to the current language in the statute. Record-keeping convenience should not trump public safety.

The DOCR asked that this committee adopt and pass engrossed SB 2115. With the suggested changes to 12.1-32-02 (9) all offender's charged with a felony and sentenced in North Dakota to one year or less would be subject to the services offer by the Interstate Compact for Adult Offender Supervision.