

2013 SENATE JUDICIARY

SB 2319

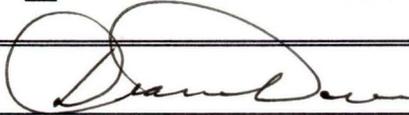
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2319
2/4/2013
Job #18203

Conference Committee

Committee Clerk Signature



Minutes:

Attached testimony

Relating to drug paraphernalia

Senator David Hogue - Chairman

Senator Grabinger - District 12 - Introduces the bill and proposes an amendment.

Opposition

Julie Lawyer - Attorney General's Office - See written testimony

Senator Grabinger - Asks about a pipe left in an ashtray being a Class C felony.

Lawyer - Says it actually reads that it has to be possessed with intent to use or used by the person. It cannot be charged on the person just because it was in the car.

Senator Armstrong - Asks how much is needed to test.

Lawyer - Said it is a very small quantity.

Senator Armstrong - States there is still a mechanism to get a Class C felony charge.

Lawyer - Replies that prosecutors could charge for the drug paraphernalia and the controlled substance but they usually don't charge for the two offenses. There is the option.

Aaron Birst - Association of Counties - Object to the bill because this might be a good study topic. He speaks of the people who are addicted to drugs and need in-patient treatment at the Tompkins Rehabilitated Unit in Jamestown needs over a one year sentence.

Senator Grabinger - Asks if a judge has to go through the Dept. of Corrections to get someone in there.

Birst - States you could get sent to the Dept. of Corrections to receive treatment or you could get sent to the state hospital but it is a criminal case the judge will be looking at DOCR as opposed to a civil petition. He said in his experience he has not seen someone with a small amount of paraphernalia end up in the state penn system for the max sentence.

Senator Armstrong - Asks if this bill passes a small amount of meth amphetamine is still going to be a felony. He asks in this bill we are just talking about the device used to ingest the drug.

Birst - Responds it is. He said he will look at the amendment.

Senator Sitte - Asks if there is a nation-wide trend to make paraphernalia a petty misdemeanor.

Birst - Replies that would surprise him but regarding marijuana the trend is gone the opposite way. Marijuana is referenced in a different bill.

Senator Hogue - Asks Mr. Birst to review the amendment with his group and Ms. Lawyer to consult the Attorney General to see if it changes their position.

Neutral

Close the hearing

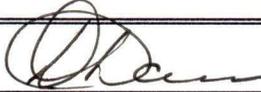
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2319
2/12/2013
Job #18828

Conference Committee

Committee Clerk Signature



Minutes:

vote

Senator David Hogue - Chairman

Committee work

Senator Grabinger moves the amendment .1001

Senator Armstrong seconded

Discussion

Senator Grabinger explains the intent of the bill and the reasons for the amendment. He goes through amendment and says it brings into line the concerns of the Peace Officers.

Vote - verbal vote, all yes

Amendment adopted

Senator Sitte moves a do pass as amended

Senator Armstrong seconded

Discussion

Senator Armstrong relates how this works in real practice. Senator Berry wonders if much will change with this. Senator Armstrong explains how the mechanism works and how each case is fact specific. Senator Sitte thinks for first time offenders this is like throwing the book at them twice so she can see the value of this bill.

Vote - 6 yes, 1 no

Senator Grabinger will carry


2-12-13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2319

Page 1, line 2, after "paraphernalia" insert "; and to provide a penalty"

Page 1, after line 6, insert:

"1."

Page 1, line 8, overstrike "manufacture,"

Page 1, after line 14, insert:

"2. A person may not use or possess with the intent to use drug paraphernalia to manufacture a controlled substance in violation of chapter 19-03.1. A person violating this subsection is guilty of a class C felony."

Renumber accordingly

Date: 2-12-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2319

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0831.01001 .10

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S Grabinger Seconded By S Armstrong

Senators	Yes	No	Senator	Yes	No
Chariman David Hogue			Senator Carolyn Nelson		
Vice Chairman Margaret Sitte			Senator John Grabinger		
Senator Stanley Lyson					
Senator Spencer Berry					
Senator Kelly Armstrong					

Total (Yes) _____ No _____

Absent Verbal - all yes

Floor Assignment _____

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

Date: 2/12/13
 Roll Call Vote #: 2

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2319**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S Sitte Seconded By S Armstrong

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson		X			
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 6 No 1

Absent _____

Floor Assignment S Grabinger

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

REPORT OF STANDING COMMITTEE

SB 2319: Judiciary Committee (Sen. Hogue, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2319 was placed on the Sixth order on the calendar.

Page 1, line 2, after "paraphernalia" insert "; and to provide a penalty"

Page 1, after line 6, insert:

"1."

Page 1, line 8, overstrike "manufacture,"

Page 1, after line 14, insert:

"2. A person may not use or possess with the intent to use drug paraphernalia to manufacture a controlled substance in violation of chapter 19-03.1. A person violating this subsection is guilty of a class C felony."

Renumber accordingly

2013 HOUSE JUDICIARY

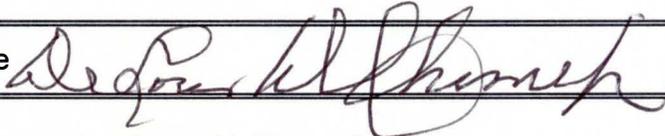
SB 2319

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee Prairie Room, State Capitol

SB 2319
March 25, 2013
Job # 20409

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to drug paraphernalia; and to provide a penalty.

Minutes:

Testimony #1

Chairman Kim Koppelman: Opens the hearing on SB 2319.

Senator Grabinger: (See Testimony #1) 00:25 - 2:25. Introduced the bill.

Rep. Ben Hanson: What is the definition of drug paraphernalia?

Senator Grabinger: It can be anything from a pipe to stall spade used for manufacturing. We took out the manufacturing portion and left that a Class C felony which is should be.

Rep. Ben Hanson: It's currently a Class C felony and this would change it to a Class A misdemeanor?

Senator Grabinger: That would be correct.

Rep. Diane Larson: You stated in your testimony that you didn't feel this was a good idea for a first time offense. It doesn't say anywhere in here that it is a Class A Misdemeanor for a first offense.

Senator Grabinger: That gives the judge the option. Right now it is a Class C felony and there is no option. If this reduces it to Class A misdemeanor that gives the judge that to utilize instead of putting a felony on somebody right away.

Rep. Diane Larson: If it is a second or tenth offense it doesn't then allow for it to be a felony.

Senator Grabinger: That is my understanding as well. In most cases if the drug that they find with the paraphernalia is probably more of a sentence than the paraphernalia itself. If they find meth in the manufacturing of the pipe or anything that there in itself is a felony.

Vice Chairman Larry Klemin: Going back to the definition of drug paraphernalia is there some other drug paraphernalia to grow illegal drug crimes?

Senator Armstrong: With the exception of manufacturing, which is excluded in this all marijuana is currently a misdemeanor. If you have a pipe, zigzags, and apple; whatever is your choice of smoking marijuana currently it is an A misdemeanor. Paraphernalia is companion charge. In order to get a paraphernalia charge; meth, heroin, oxycodone any of those types of drugs, the drug has to be part of it. You have to send it to the state crime lab and if it tests hot from that methamphetamine it comes back. At that point in time there is not a minimum requirement for possession so you can charge the C felony possession of methamphetamine. It gives the prosecutor the discretion of what to do. It doesn't give the defense attorney the discretion of what to do. If I am charged with a C felony possession and I am a guy they have known for a long time and known where I am at and maybe have some thoughts as to what I do on my activity and they don't know they are not going to give me a misdemeanor deal and dismiss the C Felony possession. But if I am a 19 year old kid who has never been in trouble before and now I have this C felony and a misdemeanor and my defense attorney can talk to the prosecutor and get it down to a misdemeanor you may be able to do that. The drug has to be part of the process; it is not a stand-alone on the investigation side. The B Misdemeanor gets charged in city court and the A Misdemeanor gets charged in district court because city courts are a court of limited jurisdiction. If you hire a lawyer because we can consolidate the cases and things of that nature; but if they are a non-represented person you would need two separate clerks and judges and two separate prosecutors and it is an exact crime and they almost never happen without the other one for those small amounts of marijuana. It gums up the system in a way I am not sure is necessary.

Vice Chairman Larry Klemin: Is there some other drug paraphernalia it needs to grow crops?

Senator Armstrong: That is for pot growers. I don't know of anyone in North Dakota growing poppy or anything like that. It is just a felony.

Chairman Kim Koppelman: I am looking for the definition for paraphernalia? You were saying this does not apply to paraphernalia use for marijuana. Is that correct?

Senator Armstrong: The changes that were made in our committee. The majority of marijuana is already charged as a misdemeanor. We don't charge C felony for small use marijuana paraphernalia.

Chairman Kim Koppelman: But the statute would allow it? Are you saying this statute that is currently a C felony does not apply to marijuana paraphernalia?

Senator Armstrong: That is correct.

Senator Sitte: After the judges came in asking for three new judgeships several of us was standing around talking to them about this. The increase of 17% more felonies over the last two years and we asked what is the number one most practical thing we could do elevate the court cases and they said make paraphernalia a misdemeanor. We heard

there are 257 collateral consequences to a felony. In Minnesota paraphernalia is a misdemeanor; we thought this was a practical way approach the situation.

Opposition:

Jackson Loftgren, Assistant Morton County States Attorney: Aaron Burst was not able to be here. We discussed SB 2319 amongst the States Attorney membership and they thought this bill should not pass. Traditionally we have always tied paraphernalia to the substance which the paraphernalia is used with. If a person is using a pipe to smoke methamphetamine we make that the same level of offense as methamphetamine. This changes that and we make it now a lesser offense if a person just has paraphernalia as opposed to the substance. The defense attorneys say you could still charge them with possession just by scraping the rezone off the pipe. That creates some problems. You first have to send it to a lab to see if there is rezone and then you are in front of a jury arguing that this coloration or burn should be considered a substance and that creates some problems. I think there is logic to treat it with the same level of defense that substance is being used for. I would urge a do not pass.

Rep. A. Maragos: Did you folks testify against this bill in the Senate?

Vice Chairman Larry Klemin: If it is your premise that you should treat paraphernalia at the same level as the substance offense then should there be a line of demarcation if the substance offense is less than a C felony than the drug paraphernalia offense should be the same level as that?

Jackson Loftgren: Right now marijuana is an A misdemeanor. It is never a felony unless a person is using it to grow the marijuana.

Vice Chairman Larry Klemin: Are there any other situations where you may have a substance offense an A misdemeanor, but the paraphernalia offense would be the C felony?

Jackson Loftgren: Not that I am aware of.

Rep. Ben Hanson: Is your problem with this more the lack of uniformity between the charges of possession and paraphernalia.

Jackson Loftgren: We want to keep consistency.

Rep. Ben Hanson: You were saying someone would smoke all their meth or however they intake it before police knocked on the door; I don't understand how that would change anything at that point. Someone high on meth is easy to detect in the human body and you would still charge them.

Jackson Loftgren: That would fall under ingestion and that would also be a misdemeanor. So they would escape that felony by purposely consuming all the meth themselves.

Rep. Lois Delmore: Why do we need to double charge for these people? Especially those first time offenders? I don't understand why you need two felonies to put on there?

Jackson Loftgren: I am not sure anyone is charging two felonies. We would just charge the paraphernalia; unless a person has got their pipe and a baggie of meth. We would never charge for just the resin on the pipe.

Rep. Lois Delmore: Then way do we need to have it?

Jackson Loftgren: The bill would change it so that all paraphernalia would be an A misdemeanor.

Rep. Lois Delmore: But if you are not charging why do you care whether this one changes it or not? If you are only going to do one charge or the other why is this a big deal other than someone may be in possession of something that isn't even theirs and I can see that happening and you would acknowledge that sometimes that happens as well.

Jackson Loftgren: We would charge for the paraphernalia because that is physical.

Rep. Diane Larson: Did I remember right Senator Armstrong said if you have a misdemeanor charge and a felony charge you would be in two different courts? Is that part of the reason for wanting the uniformity between the two charges?

Jackson Loftgren: He addressed something that wasn't in this bill.

Rep. Ben Hanson: In your organizations opinion it wouldn't not provide any cost savings for the court?

Jackson Loftgren: The case would still get charged. If the person wanted a trial we would still have a trial. I don't see where this would be a huge cost savings.

Rep. Ben Hanson: The one hearing for each case multiplied by how many cases per year wouldn't add up to a significant amount in your opinion?

Jackson Loftgren: No. Felony offenses have the right to a preliminary hearing. The just has to determine before you hearing whether there is probably cause. Misdemeanors don't get that. They are consolidated all for the same day so I can't see any cost savings to anyone.

Rep. Diane Larson: Do you find there are times where law enforcement will charge both the drug possession and the paraphernalia? But when you take it into court you just chose to prosecute one of them and you don't take the other one forward.

Jackson Loftgren: It is always just the paraphernalia unless there are some drugs on the side. If they fine a pipe and a bag of drugs you will get both charges.

Rep. Diane Larson: That is what I was referring to that you would get both and then you could chose to only prosecute one of them. Is that correct?

Jackson Loftgren: Yes that is correct.

Rep. Randy Boehning: It seems odd that we would be stopping somebody and goes into their house for some paraphernalia and then they would have some drug residue someplace in a baggy. Are we charging them for paraphernalia and not finding any drugs?

Jackson Loftgren: It does happen.

Rep. Randy Boehning: How often?

Jackson Loftgren: I would say you find paraphernalia just as often if not more than the drugs.

Rep. Kathy Hogan: If this bill did pass would it change your charging practices?

Jackson Loftgren: I think it would. The argument we get from defense attorney's is just charge them for the resin as possession so you end up with the same charges; just in a more ridiculous and non-sensible fashion.

Chairman Kim Koppelman: You talked about the idea of ingestion being less of a crime than the possession. I understand that if it is a large quantity and you can make the connection with intent to distribute. Has that ever been discussed if you have a small amount why it would be less of a crime if you just ingested versus if you are holding it in your hand?

Jackson Loftgren: That is one of the things that doesn't make a lot of sense.

Chairman Kim Koppelman: Drug paraphernalia is discovered; it is a house rented by ten college guys and it was his not mine; how does that play out?

Jackson Loftgren: You have to look at where it is found. Usually someone will admit that is mine so that is what happens in that case.

Chairman Kim Koppelman: If they don't admit it is it difficult to get a verdict?

Jackson Loftgren: It's not difficult even if you charge multiple people at some point one of them will come forward.

Neutral:

Jonathan Byers, Attorney General's Office: We did testify against this bill on the Senate side. It is less objectionable to the Attorney General with the amendment. ND law does provide for reduction to misdemeanor for anybody that is sentenced to a year or less in time anyways so this may effect that this will reduce the judicial activity because if it is a case where it is a first offense even under current law if the judge sees first offense the judge will sentence the person to a year or less it would be a misdemeanor anyways. It will not save the court a lot of resources.

Rep. Diane Larson: Did you say if it was a felony offense the judge can reduce it to a misdemeanor?

Jonathan Byers: By effect of law if the judge sentences the person to a year or less in overall jail time by effect of law it becomes a misdemeanor after their probation.

Rep. Randy Boehning: That still remains on your record as a felony right?

Jonathan Byers: It will reflect on the criminal history record that it was initially charged as a felony and then on the bottom of the criminal history record there will be a notation that by completion of probation this offense became a misdemeanor.

Rep. Randy Boehning: So that won't affect you getting into law school or a passport; owning a fire arm or anything?

Jonathan Byers: it may depend on how the question is asked. If they have ever been convicted of a felony as long as it is after your probation you can say I was not convicted of a felony.

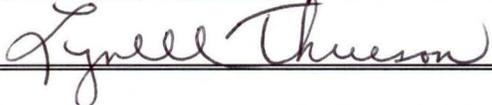
Hearing closed.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2319
April 2, 2013
Job 20760

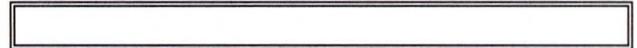
Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to drug paraphernalia and to provide a penalty.

Minutes:



Chairman Kim Koppelman: Opens SB 2319 for committee action.

Representative Hanson: This bill had disparity between possessions of drugs vs. possession of paraphernalia and use of both. Weren't we going to add amendments on to this?

Chairman Koppelman: In testimony Mr. Armstrong said that marijuana should track with paraphernalia.

1:13 Representative Maragos: I move a Do Pass on SB 2319. Seconded by Representative Larson.

Vice Chairman Klemin: I'm going to resist the Do Pass on this. I think it should be a Do Not Pass. Chairman Koppelman: He did say a reduction to a misdemeanor may be possible.

Representative Maragos: I thought one of the rationales was that because one is a misdemeanor and one is a felony they ended up in two different jurisdictions covering the same thing.

4:12 Vice Chairman Klemin: The example given was about marijuana which was wrong.

Representative Larson: I am voting against my seconding of the motion.

Representative Maragos: I withdraw my Do Pass motion.

Chairman Koppelman: Motion and second withdrawn.

Representative Hanson: I move a Do Not Pass based on inconsistencies in the categorization and the testimony we heard. Seconded by Representative Larson.

A Do Not Pass Roll Call vote on Engrossed SB 2219. **Yes = 8, No = 6, Absent = 0. Carrier:** Representative Hanson.

Date: 4-2-13
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2319**

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Hansen Seconded By Rep. Larsen

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore		/
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning		/	Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos		/			
Rep. Gary Paur		/			
Rep. Vicky Steiner		/			
Rep. Nathan Toman		/			

Total (Yes) 8 No 6

Absent 0

Floor Assignment Rep. Hansen

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

REPORT OF STANDING COMMITTEE

SB 2319, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman)
recommends **DO NOT PASS** (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2319 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2319

13.0831.01001
Title.

Prepared by the Legislative Council staff for
Senator Grabinger
February 1, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2319

Page 1, line 2, after "paraphernalia" insert "; and to provide a penalty"

Page 1, after line 6, insert:

"1."

Page 1, line 8, overstrike "manufacture,"

Page 1, after line 14, insert:

"2. A person may not use or possess with the intent to use drug paraphernalia to manufacture a controlled substance in violation of chapter 19-03.1. A person violating this subsection is guilty of a class C felony."

Renumber accordingly

Senate Judiciary Committee
Senate Bill 23~~4~~19
Testimony of Julie Lawyer, Assistant Attorney General
February 4, 2013

Chair Hogue and Members of the Committee:

My name is Julie Lawyer and I am prosecutor with the Attorney General's Office assigned to prosecute drug crimes. I have been a prosecutor for 13 years. I am here this morning in opposition of Senate Bill 23~~4~~19.

Possession of paraphernalia for use with controlled substances in schedule I, II, or III (except marijuana) is currently a class C felony. Possession of most controlled substances is a class C felony (except for small amounts of marijuana). Typically, controlled substances are inhaled or injected by the user. Rarely, controlled substances are consumed orally. Even prescription drugs that are abused are typically crushed and injected. To ingest a controlled substance, some type of paraphernalia needs to be used whether that paraphernalia is a pipe or a syringe.

Controlled substances in schedule I, II, and III include methamphetamine, synthetic "designer" drugs, cocaine, LSD, heroin, and steroids, to name a few. Possession of these drugs is a class C felony. It makes sense to have the same classification for the items used to ingest those substances.

Thank you.

Chairman Koppelman and com. Members. I am John Grabinger and I represent district 12 in the State Senate. I come before you today as the sponsor for SB 2319. This bill is an effort to change state law that makes even the possession of drug paraphernalia a class c felony. If enacted this law will change this in certain circumstances to a class A misdemeanor. After having discussions with a large state peace officers asso. It was decided to amend this bill to keep manufacturing from this reduction.

The Senate Jud. Com. wholeheartedly agreed to this and rightfully so did the full Senate. The main reason behind this bill is the thought that on a first time offense on the part of an individual in possession of drug paraphernalia either on purpose or by accident (meaning someone possibly left it in their vehicle, home, or even a borrowed coat as examples), should not be strapped for the rest of their lives with a felony conviction. Which I will remind you that even if this person were to receive a deferred sentence in ND, this conviction will still

stay on their federal record for life. Possibly creating a lifetime of changes in such things as their career choices. We can also, all of us I think, understand that with the burgeoning jail problems it was felt that this in a small way may make a difference for our judges in the sentencing of these individuals. I would ask for your concurrence on this matter and stand to try and answer any questions you may have. Thank you