

FISCAL NOTE
Requested by Legislative Council
03/14/2017

Amendment to: SB 2149

- 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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$(188,716)		\$(237,547)	
Appropriations						

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 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).*

Relates to grading of offenses related to the illegal possession of controlled substances.

- 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.*

Sections 1,5,and 7 have no measurable fiscal impact to the DOCR. The DOCR does not have historical data available that would provide for a reasonable estimate of fiscal impact, if any.

Section 4 allows for an offender convicted under 12.1-17-02 prior to 8/1/15 to be parole board eligible. This changes is estimated to reduce the 17-19 average daily prison population by 1 offender and by .5 offender for 19-21.

Section 6 Subsection 1a and 1b. - changes the grading of offenses for the manufacture, delivery, possession with intent to manufacture or deliver of a controlled substance from class A to class B felony for substances classified in schedule I and II, and changes the minimum mandatory for a 2 offense from 5 to 3 years, and the minimum mandatory for a 3 offense for 20 to 10 years. Using 2016 prison admission data the DOCR estimates this change will reduce the 2017-19 estimated average daily prison population from 1,973 to 1,971, and will reduce the 2019-21 estimated average daily prison population from 2,247 to 2,242.

The remaining subsections of Section 6 are either estimated to not have a material fiscal impact to the DOCR, or the DOCR does not have the historical data available to provide a reasonable estimate of fiscal impact, if any.

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.*

NOTE that the estimated fiscal impact is determined based on estimated expenditures to provide housing, meals and medical care for 1,973 inmates for the 2017-19 biennium and 2,247 inmates for the 2019-21 biennium. The 2017-19 estimated fiscal impact is NOT based on either the 2017-19 base budget request or the 2017-19 revised executive recommendation.

2017-19 Adult Services (\$188,716) - 100% General Funds

2019-21 Adult Services (\$237,547) - 100% General Funds

- 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.*

Appropriation levels in both the base budget and the executive recommendation are under funded to a greater degree than the sum of the calculated savings.

Name: Dave Krabbenhoft

Agency: DOCR

Telephone: 328-6315

Date Prepared: 03/15/2017

FISCAL NOTE
Requested by Legislative Council
02/17/2017

Amendment to: SB 2149

- 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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$(188,716)		\$(237,547)	
Appropriations						

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
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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).*

Relates to grading of offenses related to the illegal possession of controlled substances.

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Sections 1,5,and 7 have no measurable fiscal impact to the DOCR. The DOCR does not have historical data available that would provide for a reasonable estimate of fiscal impact, if any.

Section 4 allows for an offender convicted under 12.1-17-02 prior to 8/1/15 to be parole board eligible. This changes is estimated to reduce the 17-19 average daily prison population by 1 offender and by .5 offender for 19-21.

Section 6 Subsection 1a and 1b. - changes the grading of offenses for the manufacture, delivery, possession with intent to manufacture or deliver of a controlled substance from class A to class B felony for substances classified in schedule I and II, and changes the minimum mandatory for a 2 offense from 5 to 3 years, and the minimum mandatory for a 3 offense for 20 to 10 years. Using 2016 prison admission data the DOCR estimates this change will reduce the 2017-19 estimated average daily prison population from 1,973 to 1,971, and will reduce the 2019-21 estimated average daily prison population from 2,247 to 2,242.

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2017-19 Adult Services (\$188,716) - 100% General Funds

2019-21 Adult Services (\$237,547) - 100% General Funds

- 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.*

Appropriation levels in both the base budget and the executive recommendation are under funded to a greater degree than the sum of the calculated savings.

Name: Dave Krabbenhoft

Agency: DOCR

Telephone: 328-6315

Date Prepared: 02/17/2017

FISCAL NOTE
Requested by Legislative Council
02/09/2017

Amendment to: Engrossed SB 2149

- 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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$(188,716)		\$(237,547)	
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	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
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- 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.*

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Name: Dave Krabbenhoft

Agency: DOCR

Telephone: 328-6315

Date Prepared: 02/13/2017

FISCAL NOTE
Requested by Legislative Council
01/09/2017

Bill/Resolution No.: SB 2149

- 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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$(147,238)		\$(232,444)	
Appropriations						

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Sections 1,3,and 5 have no measurable fiscal impact to the DOCR. The DOCR does not have historical data available that would provide for a reasonable estimate of fiscal impact, if any.

Section 4 Subsection 1a and 1b. - changes the grading of offenses for the manufacture, delivery, possession with intent to manufacture or deliver of a controlled substance from class A to class B felony for substances classified in schedule I and II, and changes the minimum mandatory for a 2 offense from 5 to 3 years, and the minimum mandatory for a 3 offense for 20 to 10 years. Using 2016 prison admission data the DOCR estimates this change will reduce the 2017-19 estimated average daily prison population from 1,973 to 1,971, and will reduce the 2019-21 estimated average daily prison population from 2,247 to 2,242.

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Name: Dave Krabbenhoft

Agency: DOCR

Telephone: 328-6315

Date Prepared: 01/16/2017

2017 SENATE JUDICIARY

SB 2149

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2149
1/24/2017
27282

- Subcommittee
 Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to grading of theft offenses, illegal possession of prescription capsules, pills, or tablets, possession of marijuana, and misdemeanor marijuana convictions being excluded as prior offenses for purposes of determining mandatory terms of imprisonment; and to provide a penalty

Minutes:

No written testimony

Chairman Larson called the committee to order on SB 2219. All committee members were present. **Senator Nelson** is acting chair since **Chairman Armstrong** is testifying.

Senator Armstrong introduced and testified in support of the bill. No written testimony.

"One of the issues that has been bounced around with the Attorney General's Office and Law Enforcement Agencies, is that there is no misdemeanor disposition for prescription pills. So section 1 deals with that. You can get caught with 200 Vicodin, and that's a felony, and you can get caught with 1 Ambien, and that's a felony. That is current law in North Dakota. This bill simplifies court proceedings. In my opinion, this gives a practical, on the ground, in the courtroom, ability to negotiate from felonies. Section 2 of the bill also reduces the minimum mandatories by half."

Senator Armstrong finished discussing other portions of the bill.

Senator Nelson: "Back in the 90s when the current Attorney General was in charge of this committee. We got blasted with a whole bunch of mandatory minimums. That was supposed to solve a lot of the issues. Twenty years later now and nothing has worked."

Senator Armstrong: "That happened all over the country. This is a bipartisan issue. This started in federal court and this has been going on for years and years. The point to this whole thing is for non-violent crimes, that I'd rather have judges and prosecutors make these decisions on how they sentence people. I argue judges and prosecutors have little more expertise in these issues. This is a judge and prosecutor bill at the end of the day. Elected officials are still making these decisions, they are just making them closer to home."

Aaron Birst, North Dakota Association of Counties, testified in support of the bill. No written testimony.

“It is about time we look at these issues. With all due respect to Senator Nelson, arguably they did work. Crime rates went down dramatically and are still down. I think we should question if a 10-year mandatory for selling drugs is appropriate? We have an incarceration issue, our prisons and jails are full, there are folks who clearly deserve to be in jail, but there are also folks who shouldn't be going to jail and should have outpatient treatment services. We think gradual steps are vital. We don't support minimum mandatory sentences across the board but we are willing to work on a gradual step down from where we are now.”

Senator Armstrong: “Specifically with the Misdemeanor disposition for prescription pills, have you heard from your group regarding this issue?”

Aaron Birst: “I have discussed it with the group and they understand what you are trying to accomplish, there has been a little bit of discrepancy if ten pills is appropriate or should it be something less, but it's possible that if the transgression is minor, a felony sentence could ruin their career. We'd rather have productive members of society receiving treatment, than not.”

Jackson Lofgren, President of North Dakota Association of Criminal Defense Lawyers, testified in support of the bill. He described his past career as a prosecutor and how he supports this bill since it cleans up the criminal justice system and reduces some mandatory minimums.

Patrick Bohn, Director for Transitional Planning Services for the North Dakota Department of Corrections, testified in support of bill.

“We'd like to see minimum mandatory sentences go away, but sometimes you have to take baby steps to get to the endpoint. I'm not convinced that these types of penalties have actually reduced crime or drug use in our country. I do think this is a good first step.”

Chairman Larson closed the hearing on SB 2149.

No motions were made.

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2149 Committee Work
2/7/2017
27981

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to grading of theft offenses, illegal possession of prescription capsules, pills, or tablets, possession of marijuana, and misdemeanor marijuana convictions being excluded as prior offenses for purposes of determining mandatory terms of imprisonment; and to provide a penalty.

Minutes:

Attachments

1

Chairman Armstrong began the discussion on SB 2149. All committee members were present.

Chairman Armstrong described the amendment that was passed out. (see attachment 1)

Senator Larson: "I can give an example of this. We had cases in Bismarck where a juvenile gives Ritalin to a friend to try. It's stupid, but it's an experimental terrible mistake, and there's no opportunity at this point to do anything other than giving that juvenile a felony charge."

Senator Nelson: "So based on yesterday's bill dealing with the High School Activities Board. We'd be giving kids a chance to participate in band or athletics because they wouldn't have a felony?"

Chairman Armstrong: "Actually no. Because drug and alcohol is a zero tolerance policy."

Senator Myrdal: "Can you give example of Class C Felony assault?"

Chairman Armstrong: "If I punched you in the face that would be a misdemeanor assault, but if I broke your nose when I punched you that could potentially be a Class C Felony. But it can be upgraded depending on the severity of the assault. If I broke your nose it's a Class C Felony, but if I broke your nose and your orbital bone and you lost partial vision, then that would be enhanced to a Class B Felony. Just remember that these enhancements and reductions have to be proven in court."

Senator Myrdal: "So just to simplify the language. So you commit a Class C Felony for assault, what are you looking at in terms of sentence?"

Chairman Armstrong: "Anywhere from zero to five years, but very rarely do you get the max on a first offense. All this does is treat the probation revocation the same way we treat the underlying offense now. It treats a misdemeanor like a misdemeanor. Right now the Feds treat our misdemeanors like felonies. So we made a conscious policy decision in North Dakota to decide what is a felony and what is a misdemeanor, and we've done that throughout the code. The problem is that when we interact with other agencies, they are treating our misdemeanors like felonies."

Senator Myrdal: "I know these guys are dealing with federal law for immigration issues, not our laws. I just want to say on record that I don't want to support anything that gives the Feds a loophole regarding this issue."

Chairman Armstrong: "There are a lot of crimes of moral turpitude where you are automatically barred from entering the US. We are very tough on Canada's shoplifters, as an example."

Senator Larson: "I was in agreement with Senator Myrdal because I felt the same way that they were looking for a loophole but if what we are intending a misdemeanor to be is under a year than changing those days to make that agree with federal law shouldn't be held up because we didn't like that testimony."

Senator Larson motioned to adopt the amendment. **Senator Luick** seconded,

Chairman Armstrong: "This is all going to be picked apart and we are going to be ending up with one bill at the end. This will be given back and we'll have to meet with the House people and figure out what they like. Because there is some stuff in that bill that is coming over that I think is incredibly problematic, especially how national organizations look at our law versus what we've done over the last 3 to 4 sessions of our law. Just so the committee is aware, we are going to be getting some presumptive probation language in that bill we're going to get that I don't think anyone in North Dakota likes."

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Chairman Armstrong: "It's one thing to have the misdemeanor down from 10 pills to five pills and all the other stuff we're talking about. This bill reduces the mandatory minimums for drug sentences in half. That's the big ticket item of this bill. Now if you have a gun or a dangerous weapon then none of those things apply. This is an important first step to reform. If you aren't going to reduce minimum sentences for non-violent crimes than everything else you do is more for press and not for policy."

Senator Myrdal: "You said nonviolent crimes, some people might say anything involving drugs is violent."

Chairman Armstrong: "I hear that from law enforcement all the time. We do not clarify drug crimes as violent crime in the North Dakota Century Code."

Senator Larson: "Back in 89, I sponsored a mandatory minimum sentencing bill for drug offenses bill. We passed the Senate and House and the Governor vetoed it after we adjourned. Back then it seemed like a good idea. I think times have changed and we have more investment where we do things more up front for those people instead of putting them in treatment. Now I think we are at the point where people pay more attention to the judges who they elect compared to as the past. I think it's time to decrease the mandatory minimums of these offenses."

Chairman Armstrong: "Cops want this bill now too. They want recidivism to go away. It's amazing not a single officer testified in opposition of the bill."

Senator Nelson: "Senator Larson and I served in the House at about the same time, when I first came into this our current Attorney General was in charge of the committee and we changed a lot of things to minimum mandatory sentencing. They didn't trust the judge's; the judge's weren't doing what they were supposed to be doing. Now its 22 years later and we are taking a look at what we should have done back then. It's interesting to run full circle here."

Chairman Armstrong: "I worked with people from both sides regarding this issue, but to be fair, this doesn't get rid of minimum mandatory sentences which would be my personal preference, it just cuts them in half."

Senator Luick motioned Do Pass as Amended. **Senator Nelson** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Chairman Armstrong carried the bill.

Chairman Armstrong ended the discussion on SB 2149.

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2149 Rereferred
2/13/2017
28297

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to grading of theft offenses, illegal possession of prescription capsules, pills, or tablets, possession of marijuana, and misdemeanor marijuana convictions being excluded as prior offenses for purposes of determining mandatory terms of imprisonment; and to provide a penalty.

Minutes:

Attachments

1

Chairman Armstrong began the discussion on SB 2149. All committee members were present.

Senator Nelson motioned to Reconsider. **Senator Larson** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Chairman Armstrong went over the new Amendment. (see attachment 1)

Senator Myrdal motioned to Adopt the Amendment. **Senator Luick** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Senator Luick motioned for Do Pass as Amended. **Senator Myrdal** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Chairman Armstrong carried the bill.

Chairman Armstrong ended the discussion on SB 2149.

February 8, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2149

Page 1, line 1, after "to" insert "create and enact a new subsection to section 12.1-32-09.1 of the North Dakota Century Code, relating to the penalty for a class A misdemeanor; to"

Page 1, line 1, after the comma insert "subsection 5 of section 12.1-32-01,"

Page 1, line 14, replace "ten" with "five"

Page 1, after line 14, insert:

"SECTION 2. AMENDMENT. Subsection 5 of section 12.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

5. Class A misdemeanor, for which a maximum penalty of ~~one year's~~ imprisonment for three hundred sixty days, a fine of three thousand dollars, or both, may be imposed."

Page 1, after line 20, insert:

"SECTION 4. A new subsection to section 12.1-32-09.1 of the North Dakota Century Code is created and enacted as follows:

An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board."

Renumber accordingly

17.0619.02001
Title.03000

Adopted by the Judiciary Committee

February 13, 2017

ET

2-13-17

p. 1 of 1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2149

Page 5, line 26, replace "ten" with "five"

Renumber accordingly

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2149**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0619.01001

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 Senator Larson Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2149**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0619.01001

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 Senator Luick Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Chairman Armstrong

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

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2149**

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 Senator Nelson _____ Seconded By Senator Larson _____

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 _____ No 0 _____

Absent 0 _____

Floor Assignment _____

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

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2149**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0619.02001

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 Senator Myrdal Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2149**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0619.02001

Recommendation: Adopt Amendment
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 As Amended Rerefer to Appropriations
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 Other Actions: Reconsider _____

Motion Made By Senator Luick Seconded By Senator Myrdal

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Chairman Armstrong

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

REPORT OF STANDING COMMITTEE

SB 2149: Judiciary Committee (Sen. Armstrong, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2149 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new subsection to section 12.1-32-09.1 of the North Dakota Century Code, relating to the penalty for a class A misdemeanor; to"

Page 1, line 1, after the comma insert "subsection 5 of section 12.1-32-01,"

Page 1, line 14, replace "ten" with "five"

Page 1, after line 14, insert:

"SECTION 2. AMENDMENT. Subsection 5 of section 12.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

5. Class A misdemeanor, for which a maximum penalty of ~~one year's~~ imprisonment for three hundred sixty days, a fine of three thousand dollars, or both, may be imposed."

Page 1, after line 20, insert:

"SECTION 4. A new subsection to section 12.1-32-09.1 of the North Dakota Century Code is created and enacted as follows:

An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2149, as engrossed: Judiciary Committee (Sen. Armstrong, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2149 was placed on the Sixth order on the calendar.

Page 5, line 26, replace "ten" with "five"

Renumber accordingly

2017 HOUSE JUDICIARY

SB 2149

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2149
3/6/2017
28717

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to grading of theft offenses, illegal possession of prescription capsules, pills, or tablets, possession of marijuana, and misdemeanor marijuana convictions being excluded as prior offenses for purposes of determining mandatory terms of imprisonment; and to provide a penalty.

Minutes:

1

Chairman K. Koppelman: Opened the hearing on SB 2149.

Senator Armstrong: A couple clean up issues: In Section 2 we reduced a class A misdemeanor from one year to 360 days. We did that with DUI already and part of that we because of the interstate compact. This extends this to all Class A misdemeanors. We chose 360 because it already exists. A year in jail is treated like felony so the fact we say misdemeanor doesn't really matter. This treats probation for Class C felonies the way we currently treat the underlying charge now. This will have a limited shelf. This would affect people who have been sentenced now. As we move forward as an 85% crime it will change with the way that goes. The two things the bill does is create a misdemeanor disposition for prescription drugs. Currently if you get caught with 1 amnion in your pocket without a prescription it is a Class C felony. We have no misdemeanor disposition for prescription drugs. We came to this five pill or less. If they are obtaining pills illegally they are obtaining whatever they can get. This will turn out in most cases to be a misdemeanor trapdoor for a prosecutor that starts as a felony. One of my issues is felonization. You get a 4.0 chemistry major who has adrenal in his pocket because he has been studying all week we should be dealing with that situation, but I am not interested in making a 21-year-old 4.0 chemistry major a felon when he has got three adrenal in his pocket and he gets arrested. The only way you get an A felony in Chapter 19 of the drug code and reduced all the minimum mandatory in half and took out all the A felonies. We are trying to stay clear of the violent crimes. Prior misdemeanor drug convictions will not be used for enhancement. You have to get caught with dealing twice or a felony possession before minimum mandatories apply. I was surprised it was as small as it was.

Patrick Bohn, Director for Transitional Planning Services: (#1) Went over testimony. (8:03-10:25)

Chairman K. Koppelman: What about the fiscal note? Is some of this estimation?

Patrick Bohn: We are not sure how this will work. Over the course of this life cycle; if it were pure and they are all going to get patrolled and they are all not going to come back you would see a much more significant fiscal note.

Chairman K. Koppelman: Do you see a lot of people in the pen for those kind of crimes?

Patrick Bohn: We see on occasion. It is not a lot. Either it is a first time sentence because the court things they need to get treatment. Or they were put on probation and they continued to use so there are life cycle things.

Chairman K. Koppelman: I would like to get us a listing of all the legislation this session that deals with things like this? Is there a way you can get our intern a list like this?

Aaron Burst, Association of Counties: States Attorney prospective. We support the general concept of this bill and going statute by statute reviewing the penalty sections. My members think that is the easiest way to identify where we can find some common ground. We can get rid of our prison population today but that will not change the addiction issues those have to be addressed or you will find them back in the pen or the jail because of another crime.

Representative Nelson: Have the Association of Counties gone through and figured on how much it is going to cost our counties if they all start to evaluate prisoners for drug abuse etc.

Aaron Burst: Jails are doing more than just holding people. They are offering programs. It will be a cost additionally to our counties. This is better policy to deal with this on the local level than have to send somebody to the DOC. That has gotten some headlines in the Fargo Forum lately. I would suggest if the committee is concerned with those kind of cases now would be the opportunity in section 8 to look at that.

Chairman K. Koppelman: Do you have suggestions there?

Aaron Burst: We would help with that area. I can look at it.

Chairman K. Koppelman: We will hold onto the bill for a day or two give you an opportunity to do that.

Representative Paur: Section 8 is where the feds overruled this? Is there any way we can override the feds?

Aaron Burst: They did not feel the overdose and immunity section applied in that factual situation. They felt it was a dealer and they are excluded in this. There is no way that you could stop the feds from doing what they want to do.

Chairman K. Koppelman: You said this was not a cure all. We are trying to get people who have addiction issues getting them into treatment. We need to get effective treatment, and we have challenges ahead of us.

Aaron Burst: You can't do this cheap. Any state that does the Justice Reinvestment if you don't have dollars showing up for effective treatment we are not going to solve anything.

Representative Vetter: On Section 8 this is the one if you have a few individual doing some drugs and one has an over doze and you bring them to the hospital they are immune to prosecution. If it is a federal crime the feds don't recognize this immunity?

Aaron Burst: The federal government has no legal obligation to comply with our statutory structure. They looked at the last section of this and they felt there was dealing involved in this that there was dealing involved in a bigger level than simply passing a joint deal. They feel like the law did not apply to them.

Representative Vetter: So if those individuals that were doing those drugs and they happen to one of them be a dealer; he or she would not qualify under there because they have separate dealings?

Aaron Burst: That is 100% correct. That is a policy this committee needs to make.

Chairman K. Koppelman: When you talk about disagreements with DOCR on some areas; I have heard that courts frequently send people to the pen for treatment. There are also cases a judge does feel the person requires both confinement and treatment.

Aaron Burst: That is 100% what my members would feel. Every major jail and penitentiary in the country is not unique to ND. Folks we see that end up at the pen have been given many chances and have done a lot of the local options. Ultimately they have earned their right to go to the pen.

Chairman K. Koppelman: We need to find out what really works and work together.

Aaron Burst: Counties struggle with this. Many small counties don't have jails so there even if you have a local option you really don't have the options. Our members feel it is more effective to say the legislature is telling prosecutors these are priorities. Let reduce the offense level on these.

Chairman K. Koppelman: You were involved in the development of this.

Opposition: None

Neutral: None

Hearing closed.

House Judiciary Committee

SB 2149

March 6, 2017

Page 4

Chairman K. Koppelman: What are the committees wishes with this bill? We will hold the bill even though we are voting on it to check with Mr. Burst on Section 8.

Do Pass Motion Made by Representative Vetter: Seconded by Rep. Simons

Roll Call Vote: 15 Yes 0 No 0 Absent Carrier: Rep. Vetter

Closed.

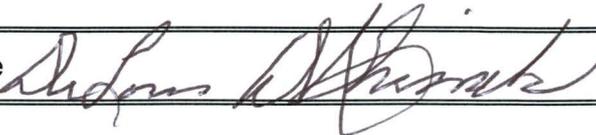
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2149
3/7/2017
28827

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to grading of theft offenses, illegal possession of prescription capsules, pills, or tablets, possession of marijuana, and misdemeanor marijuana convictions being excluded as prior offenses for purposes of determining mandatory terms of imprisonment, and to provide a penalty.

Minutes:

1

Chairman K. Koppelman: Mr. Birst has a proposed amendment for this bill.

Motion to reconsider our action by Rep. Satrom; Seconded by Representative Maragos

Roll Call Vote: 15 Yes 0 No 0 Absent Motion Carried.

Aaron Birst: (#1) Handout. Proposed amendment. (2:19-4:41) I still think it contains a provision that large drug dealers would still be capable of being prosecuted under this.

Chairman K. Koppelman: The intent of this statute is to deal with circumstances where someone has had a drug overdose and people have been afraid to call for assistance; because they were afraid they would be prosecuted.

Aaron Birst: The immunity section started out in the alcohol section so we saw how it worked so we have expanded it to drugs. This is trying to say if law enforcement finds out you are a dealer because they showed up on scene and that is when they found out you passed the drugs you would be immune. If law enforcement independently finds out, you are running a big distribution network that would not be immune in this section.

Chairman K. Koppelman: Is there anything to prevent law enforcement from having suspicions raised in a case like and maybe start to investigate an individual?

Aaron Birst: If there is evidence before the drug overdose; there is you had independent of this emergency situation he is transporting 10-15 pounds of meth; those folk's immunity does

not apply to. It is hard to use a quantity amount? You limit the immunity to drugs found on scene. You would want that drug dealer to cooperate.

Chairman K. Koppelman: Does this provide protection from those kinds of prosecutions?

Aaron Birst: Nothing would stop the feds from doing anything. They do try to stay within the spirit of our laws too.

Representative Paur: How many times is this used? If you want to go to quantities, we have a whole section on that; couldn't you just refer to that section? After that fed case this would probably be a moot point if they called the police.

Aaron Birst: It is not used very often. I can only think of one or two cases where this was used. In large part that argues that the public doesn't feel safe with this. It does not fix the federal problem. We want to make sure someone reports an overdose.

Representative Klemin: This proposed amendment is very wrong.

Chairman K. Koppelman: I think we need to see this in a better form. Mr. Birst can get that into an amendment to us tomorrow?

Rep. Satrom: I am not sure about this. I appreciate the sentiment of this. Will this actually allow more death's. is there any cost we are not seeing here?

Aaron Birst: I think some of our law enforcement folks would be thinking more on your line. We would be airing on your side. My membership would like to do this.

Chairman K. Koppelman: Are you aware of circumstances where drug dealers have gotten away with what they were doing with the existence of this statute?

Aaron Birst: No. it is more for public policy encouraging the people to call. This is a policy decision for you.

Representative Jones: There was supposed to be something in here if they are a major dealer they would not be illegible for this immunity.

Aaron Birst: It is not specific in there. It refers to if the investigation turns up is the dealing that happened on scene. Those folks would be immune.

Representative Nelson: The big change in this is the good seminarians to the dumb seminarian law so why should the person overdosing receive immunity?

Aaron Birst: The person who overdoses and ended up in the hospital is going to receive a far worse penalty by going to the hospital than they would ever so they are paying their pound of flesh.

Aaron Birst: If there is an overdose they don't call law enforcement or the hospitals; they call their drug dealer. We are trying to break that cycle.

Rep. Simons: Even though charges cannot be charged on this case, but their name is filed. Is that correct?

Chairman K. Koppelman: All we are doing here is using the evidence on the scene.

Representative Paur: You mentioned you put this in at the request of some legislators and you also said at the request of your states attorneys?

Aaron Birst: I am putting it in based on a news article that was brought to my attention. That came from a number of my members including Bert Burdick.

Representative Klemin: Would you please bring me a clear proposed amendment. Would you also provide us with a copy of the newspaper article so we would know what you are talking about?

Aaron Birst: I would be happy to.

Recessed.

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2149
3/8/2017
28926

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to grading of theft offenses, illegal possession of prescription capsules, pills, or tablets, possession of marijuana convictions being excluded as prior offenses for purposes of determining mandatory terms of imprisonment, and to provide a penalty.

Minutes:

1

Chairman K. Koppelman: Opened the meeting on SB2149.

Representative Hanson: (#1) This amendment is in reaction to providing greater clarity for Good Samaritan Laws and the head of public health in Cass County was involved with working with a group of people to put this together.

Do pass motion made by Rep. Hanson; Seconded by Roers Jones.

Closed.

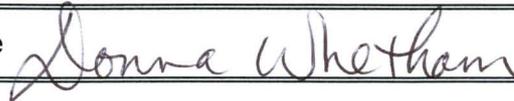
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2149
3/13/2017
29094

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to grading of theft offenses, illegal possession of prescription capsules, pills, or tablets, possession of marijuana convictions being excluded as prior offenses for purposes of determining mandatory terms of imprisonment, and to provide a penalty.

Minutes:

Attachment 1

Chairman K. Koppelman: Opened the meeting on SB 2149. (see Attachment #1) Proposed amendment.

Aaron Birst, Association of Counties: I represent the States Attorney Association on this in support of SB 2149. The bill rewrites section 8 to use the existing language. The crucial part of this is the sharing of drugs back and forth and there is an overdose, technically they would qualify as dealers which the current law does not allow them to receive immunity. This bill would allow them to receive the immunity if it is the sharing situation in a drug use situation. This would not apply to the large dealers who actually brought the large quantities.

Chairman K. Koppelman: It would protect people in a sharing situation by people in a medical situation and because of the volume used, they would receive immunity. It doesn't include the big dealers. Where does it say this?

Aaron Birst: I don't have a copy but I have it somewhat memorized. It was difficult to get this right. The spirit of the law are those folks who are passing the drugs at a party; these circumstances would be entitled to the immunity. We were suggesting a large drug dealer that drops off drugs in a large amount; this circumstance would be liable to immunity. That is our intent for this SB 2149

Chairman K. Koppelman: 4:40 Knew the individual who experiences a drug related overdose and is in need of medical assistance nor the cooperating individual seeking may be charged or prosecuted for the above referenced medical offences. Not going to be guilty of a drug related offence.

Aaron Birst: We think the intent is not to allow folks who see law enforcement coming up who have a legitimate warrant to be in the place. This bill is to purely get to the party. Law

enforcement has no idea this is taking place. Someone is going to die. That person who may have given drugs; that person would not be illegible for prosecution. Those folks would be excluded. We think this is a good balance.

Representative Klemin: On the line where it says "above reference", is this appropriate statutory language. How would you define good faith?

Aaron Birst: With regard to the good faith, the intent was to get out of criminal prosecution when it didn't apply. It most certainly is going to entail some judicial interpretation of this. If you have other ideas or wording, we'd leave it in their hands. We might not even litigate this; my people that I speak for, the state prosecutors always want to defer to, even if there is a passing of drugs, the safety of the people are the concern rather than prosecute.

Chairman K. Koppelman: I notice that you say what good faith isn't. If no further questions we thank you for helping to formulate an amendment.

Rep. Hanson: Made a motion to adopt the Amendment before us.

Rep. Roers Jones: seconded.

Chairman K. Koppelman: Rep. Lawrence Klemin brought up the necessary potential change on the amendment. We can go ahead and vote on the amendment and further amend to correct that, or we can withdraw the motion in the second, and fix it before we amend the whole thing.

Rep. Klemin: 10:16 I guess I wasn't sure that we actually have a Do Pass as amended motion?

Chairman K. Koppelman: No, we have a motion to adopt the amendment and a second.

Rep. Klemin: Would you accept the motion to amend the amendment?

Chairman K. Koppelman: If the maker and seconder of the motion have no objection.

Rep. Klemin: The motion is to remove the words "above referenced" for the words criminal offenses" and then after the word offenses, insert "described in this section."

Chairman K. Koppelman: Is there agreement with the maker and seconder of the motion? We do have agreement from the them and we will accept the motion for that amendment. Defined is the word then? Described is the word. We have the amendment as written with the exception that in the third to the last section, where it says "for the above referenced criminal offenses, "above referenced" would be stricken and after offenses, the words "described in this section" would be added. Any discussion, seeing none.

Voice Vote on that amendment. Motion carries; we have the revised amendment on SB 2149. It has been approved. What are the committee's wishes?

Rep. Vetter: Moved a Do pass as amended on SB 2149 and rerefer to Appropriations.

Rep. Maragos: Seconded for SB 2149 as amended

Chairman K. Koppelman: Is there discussion? Seeing none, we will ask the clerk to call the roll.

Roll call vote: Yes (15) No (0) Absent (0).

Chairman K. Koppelman: Motion carried on a Do Pass as amended and rerefer to Appropriations on SB 2149.

Floor Assignment: Rep. Vetter

Chairman K. Koppelman: Hearing adjourned.

March 13, 2017

ONE
3/13/17
LBJ

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2149

Page 6, line 26, after "if" insert "in good faith"

Page 6, line 26, overstrike "contacted law enforcement or emergency"

Page 6, line 27, overstrike "medical services and reported that the individual was or that" and insert immediately thereafter "seeks medical assistance for"

Page 6, line 27, overstrike the second "was"

Page 6, line 30, overstrike "emergency medical services and law enforcement personnel in"

Page 7, line 1, overstrike "need of emergency medical services. The maximum number of individuals that may be"

Page 7, line 2, overstrike "immune for any one occurrence is three individuals" and insert immediately thereafter "a condition a layperson would reasonably believe to be a drug overdose requiring immediate medical assistance. Neither the individual who experiences a drug-related overdose and is in need of emergency medical assistance nor the cooperating individual seeking medical assistance may be charged or prosecuted for the criminal offenses listed in this section or for the sharing of controlled substances among those present"

Page 7, line 3, overstrike "is not applicable for a violation under section 19-03.1-23.1" and insert immediately thereafter "does not apply unless the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for emergency medical assistance. Good faith does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or during a lawful search"

Re-number accordingly

Date: 3-2-17
 Roll Call Vote: 1

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2149**

House 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 Vetter Seconded By Simons

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson	✓	
Vice Chairman Karls	✓		Rep. Nelson	✓	
Rep. Blum	✓				
Rep. Johnston	✓				
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum	✓				
Rep. Maragos	✓				
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep. Vetter

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

Date: 3-7-17
Roll Call Vote 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1095-2149

House 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 Rep Satrom Seconded By Rep Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson	✓	
Vice Chairman Karls	✓		Rep. Nelson	✓	
Rep. Blum	✓				
Rep. Johnston	✓				
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum	✓				
Rep. Maragos	✓				
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 15 No 0

Absent 0

Floor Assignment _____

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

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2149**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0619.03001

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 Rep. Hanson Seconded By Rep. Roers Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote. Motion carried.

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2149**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0619.03001

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 Rep. Vetter Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	X		Rep. Hanson	X	
Vice Chairman Karls	X		Rep. Nelson	X	
Rep. Blum	X				
Rep. Johnston	X				
Rep. Jones	X				
Rep. Klemin	X				
Rep. Magrum	X				
Rep. Maragos	X				
Rep. Paur	X				
Rep. Roers-Jones	X				
Rep. Satrom	X				
Rep. Simons	X				
Rep. Vetter	X				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep. Vetter

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

REPORT OF STANDING COMMITTEE

SB 2149, as reengrossed: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed SB 2149 was placed on the Sixth order on the calendar.

Page 6, line 26, after "if" insert "in good faith"

Page 6, line 26, overstrike "contacted law enforcement or emergency"

Page 6, line 27, overstrike "medical services and reported that the individual was or that" and insert immediately thereafter "seeks medical assistance for"

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Page 7, line 3, overstrike "is not applicable for a violation under section 19-03.1-23.1" and insert immediately thereafter "does not apply unless the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for emergency medical assistance. Good faith does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or during a lawful search"

Renumber accordingly

2017 HOUSE APPROPRIATIONS

SB 2149

2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

SB 2149
3/23/2017
29647

- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to grading of theft offenses, illegal possession of prescription capsules, pills, or tablets, possession of marijuana, and misdemeanor marijuana convictions being excluded as prior offenses for purposes of determining mandatory terms of imprisonment; and to provide a penalty.

Minutes:



Chairman Delzer: This is a bill that looks like it deals with the convictions, lowering convictions. I think the fiscal note is actually a positive fiscal note?

Representative K. Koppelman, District 13 West Fargo: Yes, in fact the three bills you have before you today have a combined fiscal note of about 750 thousand dollars on the general fund. SB 2149 this bill is basically reduces some of the penalties, for example if you're caught right now with 1 prescription pill that doesn't belong to you it's a very serious crime and what this bill does is basically says that you need 5 pills to get to that same level of crime. There are some reductions in the mandatory minimum lengths of sentences for example on page 3 of the bill Section 6B second offense, to imprisonment for at least 3 months instead of 6. Third offense is 5 years down to 10. That's what the bill does and how we get the results in the fiscal notes.

Chairman Delzer: When you look at the fiscal note it looks like if we don't pass it they will be needing more money.

Representative Delmore: Are these suggested changes or are they mandatory? Will the courts have to follow these?

Representative K. Koppelman: These are minimum sentences so the courts can look at the facts and hand down heavier sentences if they would think that it fit.

Chairman Delzer: Further discussion?

2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

SB 2149
3/28/2017
29763

- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to grading of theft offenses, illegal possession of prescription capsules, pills, or tablets, possession of marijuana, and misdemeanor marijuana convictions being excluded as prior offenses for purposes of determining mandatory terms of imprisonment

Minutes:



Chairman Delzer: Changes the amount of prescription pills you can be out with before you are in trouble come out or the justice reinvestment. It loosens up some the laws and restrictions and the felony charges, trying to get control on the prison population. Any questions about the bill? Do we need any changes?

Representative Meier: Moved Do Pass

Representative Boehning: Second that Motion

Chairman Delzer: The fiscal note looks lie expenditures of actual reduction in costs, changes the minimum mandatory. Further discussion?

A Roll Call vote was taken. Yea: 17 Nay: 0 Absent: 4

Representative Vetter will carry the bill

Date: 3/28/2017
 Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2149**

House Appropriations 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 Representative Meier Seconded By Representative Boehning

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X				
Representative Kempenich	A		Representative Streyle	A	
Representative: Boehning	X		Representative Vigesaa	X	
Representative: Brabandt	X				
Representative Brandenburg	X				
Representative Kading	X		Representative Boe	X	
Representative Kreidt	A		Representative Delmore	X	
Representative Martinson	X		Representative Holman	X	
Representative Meier	X				
Representative Monson	X				
Representative Nathe	X				
Representative J. Nelson	X				
Representative Pollert	X				
Representative Sanford	X				
Representative Schatz	X				
Representative Schmidt	A				

Total (Yes) 17 No 0

Absent 4

Floor Assignment Representative Vetter

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

Motion Carries

REPORT OF STANDING COMMITTEE

SB 2149, as reengrossed and amended: Appropriations Committee (Rep. Delzer, Chairman) recommends **DO PASS** (17 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). Reengrossed SB 2149, as amended, was placed on the Fourteenth order on the calendar.

2017 CONFERENCE COMMITTEE

SB 2149

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2149/1041 Conference Committee
4/5/2017
29953

Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to grading of theft offenses, illegal possession of prescription capsules, pills, or tablets, possession of marijuana, and misdemeanor marijuana convictions being excluded as prior offenses for purposes of determining mandatory terms of imprisonment; and to provide a penalty.

Minutes:

No written testimony

Chairman Armstrong called the committee to order on SB 2149. All committee members were present: Senators Armstrong, Larson, Nelson; Kim Koppelman, Satrom, Nelson.

Chairman Armstrong: "My first question, and I don't know how everybody feels about this, but 1269 looks an awful lot like each other. From our perspective, this bill, 1041, and 1269 all look an awful lot alike and so I'm assuming we will be discussing all of these sort of together."

Representative K. Koppelman: "You and I talked about that and I agree. All three of these bills revolve around the justice reinvestment idea."

Chairman Armstrong: "There are a lot of things we didn't touch in 1041: snap issue, appropriation, enabling language, etc."

Representative K. Koppelman (4:15): "This can be done through administrative rules, but since we are legislators and we are looking at this during a legislative session; then let's make law. So just to clarify you have no objection to the provisions that the House amended in 2149, you just conferenced it so we can discuss all of these and you move that into 1269, if I understand correctly?"

Chairman Armstrong: "Yeah, and I think there's a couple of things to note. If you go to section 12 on 2149, this is where we catch stuff sometimes. If we are up to an ounce everywhere else, I don't know why it would be ½ ounce there? That wasn't a change, that's existing law. What they changed is the subsection, but when we get to the subsection the question is why don't we change from ½ to one ounce? Did you add good Samaritan language into the bill and can you explain why?"

Representative K. Koppelman (5:55): “We did. The key issue was you have a scenario where there’s a gathering or a party and someone is overdosing, and sometimes people don’t call the authorities because they are afraid of the consequences being around drugs and all that stuff. So the idea is to have something that protects them when it deals with someone’s life. The reason it didn’t pass before because the issue was, was this a get out of jail free card? That’s why the House did the language where we talk about a lay person would reasonably believe a person was overdosing and would require immediate medical assistance.”

Chairman Armstrong: “The originally driving force of this came out of Fargo and it was a federal case.”

Representative K. Koppelman: “The whole idea is to give the public some confidence that they can do this and not get into trouble.”

Chairman Armstrong: “I don’t mind this language at all, I don’t think this language wouldn’t have gotten that case in Fargo off the hook. The one thing I think we should look at in this language is the immediacy of when they call. I don’t know how you would deal with that, but the quicker you get somewhere the better the chance of saving someone’s life.”

Representative K. Koppelman: “That’s a good point. I’d agree with that.”

Senator Larson (10:30): “Two sessions ago, I chaired the conference committee where we ended up killing that bill because it did go too far in protecting people, and law enforcement was concerned that it went too far.”

Chairman Armstrong: “We will meet tomorrow at 11 to discuss this some more.”

Chairman Armstrong closed the hearing on SB 2149.

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2149/1041 Conference Committee 2
4/6/2017
29965

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to grading of theft offenses, illegal possession of prescription capsules, pills, or tablets, possession of marijuana, and misdemeanor marijuana convictions being excluded as prior offenses for purposes of determining mandatory terms of imprisonment; and to provide a penalty.

Minutes:

No written testimony

Chairman Armstrong called the committee to order on SB 2149. SB 1041 will be worked in conjunction with SB 2149. No specific bill was discussed, the committee went back and forth on both bills. All committee members were present. Senators Armstrong, Larson, Nelson; Representatives K. Koppelman, Satrom, Nelson.

Marc Pelka, Council of State Governments Council Center, came up to the podium at the request of Chairman Armstrong.

"I've had many conversations with policy makers and state officials regarding this. We have done our best to take some of the ideas that resulted from the interim committee, and the Justice Reinvestment final report to translate them into a system to figure out how policy concepts could be applied within the bill language and really be operationalized excessively within the criminal justice system."

Chairman Armstrong (2:05): "Well you brought some amendments to subsection 8 of the bill. I know there was some concerns about violent crimes in that presumptive probation language, and then we also put in some language as to define what enhancing factors are. I actually don't like it anymore, I think there's too much in that section now and I think we need to cut it way back down. What were the concerns that you guys had?"

Representative K. Koppelman: "I think that presumptive probation, I know some don't like the term, but I think the whole idea is that this is part of a new concept for our state regarding criminal justice. Some in the DOCR may not like it for variety of reasons and I understand that. I fear if we don't take some of these steps, I fear we will be back in a couple years and thing we didn't accomplish much and we would have to change things again."

Chairman Armstrong (4:10): "If we're going to do this, we need to back off a little bit. I will be the first one to admit that when we did this we knew what we were doing in that regard, but we also didn't think it was a final product."

Marc Pelka: "The key changes from the House was excluding a wider array of Class C offenses from presumptive probation. Which was the aim of the policy; to apply to people with only non-violent offenses. The offenses that are excluded do expand what would be an offense that involves harm to a person – violent or sexual. It also excludes various offenses involving fleeing the scene, firearms, rioting, types of burglary, and things like that."

Chairman Armstrong (6:05): "I think to some degree that having a little uniformity across the criminal justice system is not a terrible idea, particularly, if you are going to build an appellate case law around this stuff then all of a sudden end up in these types of conversations. This is a fairly new concept everywhere. I think allowing flexibility and having some uniformity are probably good ideas."

Marc Pelka: "I do agree that providing this language in statute on the outset would create some change, and would focus on the decision of which is appropriate – probation or prison."

Senator Nelson: "Which bill are you looking at?"

Chairman Armstrong: "We're looking at 1041. 1041 and 2149 are essentially the same thing, and so we will be looking at each of them in conjunction with each other. I think the question for the group is which way do we want to go with this? Do we want to specify the 12.1 language that's up there and take out particularized crimes? Do we want to set a definition of what aggravating factors are? There could be a terrorizing situation where you want prison time, but there could also be one, depending if the other aggravating factors don't apply, that probation might be more appropriate."

Representative Nelson (9:20): "I had some troubles with this bill. I would be more comfortable with a well written set of factors than trying to individually do every one of them, because we are going to miss something."

Representative K. Koppelman: "I think we could end up in almost the flipside of mandatory minimum sentences and the problems that that causes. If we go too far with just a blanket statement, then we may be denying the judges the authority to judge. Like you said, there could be cases where prison is better, and cases where probation is more appropriate, etc."

Chairman Armstrong (11:28): "I think we are all kind of on the same page, so we can just work through that."

Representative K. Koppelman: "I agree, and I think it's important to give them their tools."

Chairman Armstrong (12:00): "I just want to let everyone know why we took out section 8 in the marked up version. It's really kind of a practical thing. The way revocations work, and the way our court system has worked, is that the way I read section 8, it's 90 days, do not pass go, you are out. Well, if my former client hires me on a revocation case, there's a decent chance that I can't even get that revocation heard in 90 days. Until we can figure out how to

solve that issue, section 8 is really problematic. There needs to be something in there that says if we are going to put it back in, it has to be practical and explain how you get into court in North Dakota right now. So that's why we took it out. It doesn't function well."

Representative K. Koppelman: "Are there situations where there is escape hatch language in the law, or court procedures that somehow accounts for that? Where there's a window of time, maybe in the statute, and through no fault of the lawyer or client, you just can't get to the court in that period of time. Is there some kind of escape hatch there?"

Chairman Armstrong: "My understanding with the data is that section 8 of the bill didn't move the needle nearly as much as some of the other stuff in this bill. Let's walk with the 30 days, and if it's working well and we come up with something then maybe we bring in the 90 days two years from now? Maybe we figure out a way to do it now. So my question to you, Marc, is with that section out of here, how would that affect us compared to other states in what you put together?"

Marc Pelka: "It's not a significant reduction. In terms of impact, it would reduce it by 10-15%."

Representative K. Koppelman (17:27): "I believe it's important to include a faith based option for some of the treatment issues that go on and so on. The data that I've seen from the groups that provide that kind of service is just astounding, and really outpaces other options that we utilize regularly."

Marc Pelka: "I have spoken at length about ways to involve the faith community in delivering services to people in the criminal justice system who are returning, or who are on probation/parole, and it's an extraordinary impact that faith based communities are having across the state. It's struggle to find language in the bill that could accommodate it."

Chairman Armstrong (19:25): "The question is it a statement, a study resolution, or what? The ones that go to those work really well. My clients who have done Teen Challenge and those types of areas have a better chance of not going back."

Senator Larson: "I agree with that as well. Have we looked at giving funding to non-profits for the treatment?"

Representative Koppelman: "I think that's something worth looking at."

Chairman Armstrong: "We do give them money."

Senator Nelson (21:50): "I don't necessarily disagree, but in my community I have more than Christian-base groups, and I would have a concern if it got down to only Christian-based groups."

Chairman Armstrong: "The data would support that. I think this is a unique bill to begin with. Section 5, page 3 of the marked up version, we took \$2500 down to \$1000 to make it consistent with the code regarding felonies."

Representative K. Koppelman: "How long has it been since we changed it?"

Chairman Armstrong: "Two sessions ago. It had been 500 for a while and we moved it up to \$1000."

Marc Pelka (24:40): "Just a few things to add, I noticed that a delayed-effective date was set for, in my version, the 30 days. I spoke with Pat at DOCR, and I heard no concern about removing that delayed-effective date for that. I hope to mention in some way that aggravating factor could be in offense and not explicitly exempted from the policy. If a Judge would say in this community that this offense should be grounds for counting for a violent offense, and therefore, should be excluded, an aggravating factor could be that exactly. That is one option for you to consider as you manage the jigsaw puzzle of going with exempted offenses or aggravating factors."

Representative K. Koppelman: "Marc, can you give us some language about the options you were just discussing, regarding presumptive probation and so on?"

Marc Pelka: "Yes."

Senator Nelson (29:00): "Marc, you were talking about effective dates and you said you didn't need section 20. However, when you look at section 21, it eliminates the emergency clause for everything except for sections 7 and 8. So are you suggesting sections 7 and 8 would become law on August 1st like every other bill, and all the rest of it would become effective immediately? Or do you want the entire bill immediately? Or what?"

Chairman Armstrong: "That would be my question for him, if section 7 comes out it's the 30-day probation, but my question for the practitioners would be why do we need a delayed effect on the presumptive probation language?"

Marc Pelka: "That's for an implementation perspective; having time for information to reach judges and practitioners and that's the reason."

Chairman Armstrong closed the hearing on SB 2149.

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2149
4/17/2017
Job # 30156

Subcommittee
 Conference Committee

Committee Clerk Signature

Emmery Brothberg

Explanation or reason for introduction of bill/resolution:

Relating to grading of theft offenses, illegal possession of prescription capsules, pills, or tablets, possession of marijuana, and misdemeanor marijuana convictions being excluded as prior offenses for purposes of determining mandatory terms of imprisonment; and to provide a penalty

Minutes:

Chairman Armstrong: Opened the conference committee discussion on SB 2149.

Senator D. Larson: Moved the Senate Accede to the House Amendments.

Representative Satrom: Seconded the motion.

Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion carried.

Chairman Armstrong will carry the bill to the Senate floor.

Representative Koppelman will carry the bill to the House floor.

Chairman Armstrong: Closed the hearing on SB 2149.

**2017 SENATE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. 2149 as reengrossed

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: Senator D. Larson Seconded by: Representative Satrom

Senators	4/17		Yes	No	Representatives	4/17		Yes	No
Senator Armstrong	X		X		Representative Koppelman	X		X	
Senator D. Larson	X		X		Representative Satrom	X		X	
Senator Nelson	X		X		Representative Nelson	X		X	
Total Senate Vote					Total Rep. Vote			3	

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Sen. Armstrong House Carrier Rep. Koppelman

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2149, as reengrossed: Your conference committee (Sens. Armstrong, D. Larson, Nelson and Reps. K. Koppelman, Satrom, M. Nelson) recommends that the **SENATE ACCEDE** to the House amendments as printed on SJ pages 1054-1055 and place SB 2149 on the Seventh order.

Reengrossed SB 2149 was placed on the Seventh order of business on the calendar.

2017 TESTIMONY

SB 2149

February 8, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2149

Page 1, line 1, after "to" insert "create and enact subsection 4 of section 12.1-32-09.1 of the North Dakota Century Code, relating to the penalty for a class A misdemeanor; to"

Page 1, line 1, after the second comma insert "subsection 5 of section 12.1-32-01,"

Page 1, line 10, after the colon insert:

"SECTION 1. Subsection 4 to section 12.1-32-09.1 of the North Dakota Century Code is created and enacted as follows:

4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation prior to August 1, 2015, is eligible to have the offender's sentence considered by the parole board."

Page 1, line 14, replace "ten" with "five"

Page 1, after line 14, insert:

SECTION 3. AMENDMENT. Subsection 5 of section 12.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

5. Class A misdemeanor, for which a maximum penalty of ~~one year's~~ three hundred sixty days imprisonment, a fine of three thousand dollars, or both, may be imposed.

Renumber accordingly



17.0619.02001
Title.03000

Adopted by the Judiciary Committee

February 13, 2017

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2149

Page 5, line 26, replace "ten" with "five"

Renumber accordingly

HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE KIM KOPPELMAN, CHAIRMAN
MARCH 6, 2017

#1
2149
3-6-17

**PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY RE: REENGROSSED SB 2149**

My name is Pat Bohn and I am the Director for Transitional Planning Services for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify on behalf of the department in support of Rengrossed SB 2149.

What this bill does:

Among the many things this bill does, including reducing the minimum mandatory penalties for drug manufacturing or delivery, this bill proposes negating the 85% penalty for a sentence to prison upon revocation of probation for the C felony Aggravated Assault which is where I'll focus my testimony.

Background:

The Violent Offender Incarceration and Truth-In-Sentencing Incentive Formula Grant Program (VOI/TIS) contained in the Violent Crime Control and Law Enforcement Act of 1994 provided states formula grants to build or expand correctional facilities and jails to increase secure confinement space for violent offenders. In response, in 1995 the 54th Legislative Assembly enacted N.D.C.C. section 12.1-32-09.1 which requires people to serve 85% of the court imposed sentence without the benefit of parole if convicted of committing, attempting to commit or accomplice to the criminal offenses of Murder (12.1-16-01), Manslaughter (12.1-16-02), Aggravated Assault (12.1-17-02), Kidnapping (12.1-18-01), Robbery (12.1-22-01), Gross Sexual Imposition with the use of force or the threat of the use of force that would result in the death, serious bodily injury or kidnapping (12.1-20-03 – 1(a) or 2(b)), Burglary with the use of force or a weapon while encountering the inhabitants (subdivision b of subsection 2 of section 12.1-22-02). Between 1996 and 2001 North Dakota received \$10,351,888 and used its VOI/TIS funds for the James River Correctional Center (Opened in 1998). VOI/TIS funds were also used to lease private transitional beds. (February 2012 REPORT TO CONGRESS by U.S. Department of Justices: <https://www.bja.gov/Publications/VOITIS-Final-Report.pdf>)

Current Situation:

In 2015 the legislature passed a bill removing the C felony Aggravated Assault from the list of offenses that carry the 85% penalty; however, those who committed their offense prior to August 1, 2015 do not benefit from this penalty change. Of the approximately 1820 people in prison when I did some analysis in January of this year, 311 were serving an 85% penalty sentence. Approximately 33% of those were serving a sentence subsequent to a probation revocation. Almost half of them were for Aggravated Assault (C Felony).

Proposed Solution:

We believe by removing the requirement that people are subject to the 85% statute upon revocation we can improve outcomes. By making these people eligible for parole during their incarceration we will have greater chance of reducing recidivism while holding people accountable, maintaining and maybe even improving public safety and reducing the likelihood of future victimization. We believe you should allow the parole board to evaluate these cases during their sentence and analyze the prospects of methodically transitioning them from prison back to the community under the conditions established by the board. Let me share with you a few other interesting aspects of this law:

1. This applies to any subsequent probation revocation which can sometimes occur 3, 5, 10 years after the original act.
2. Eventually this law will not apply to anyone as cases complete their lifecycle.

In closing, if you have any questions, I'd be glad to try and answer them.

#1
2149
3-7-17

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 those individuals in good faith seek medical assistance for 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 individuals receiving immunity must have remained on the scene until assistance arrived, cooperated with emergency medical services and law enforcement personnel in the medical treatment of the reported drug overdosed individual, and the overdosed individual must have been in an acute condition that a layperson would reasonably believe to be a drug overdose that requires immediate medical assistance. need of emergency medical services. The individual who experiences a drug-related overdose and is in need of medical assistance may not be charged or prosecuted for the possession, sharing, or use of a controlled substance. The maximum number of individuals that may be immune for any one occurrence is three individuals. Immunity from prosecution under this section only applies if the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for medical assistance. is not applicable for a violation under section 19-03.1-23.1. Good faith does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or a lawful search.

SB 2149
3-8-17
1

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2149

Page 6, after line 22, replace section 8 with:

"19-03.1-23.4. Overdose prevention and immunity.

Individuals are ~~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~~8~~ of section 19-03.1-23, subsection 3 of section 19-03.2-03, and section 19-03.4-03 if ~~that individual~~ those individuals in good faith seek medical assistance for ~~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 individuals receiving immunity must have remained on the scene until assistance arrived, cooperated with emergency medical services and law enforcement personnel in the medical treatment of the reported drug overdosed individual, and the overdosed individual must have been in a condition that a layperson would reasonably believe to be a drug overdose that requires immediate medical assistance. ~~need of emergency medical services.~~ Neither the individual who experiences a drug-related overdose and is in need of medical assistance nor the cooperating individual(s) seeking emergency medical assistance may be charged or prosecuted for the above referenced criminal offenses or the sharing of controlled substances among those present. ~~The maximum number of individuals that may be immune for any one occurrence is three individuals.~~ Immunity from prosecution under this section only applies if the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for medical assistance. ~~is not applicable for a violation under section 19-03.1-23.1.~~ Good faith does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or a lawful search."

Renumber accordingly

#1
SB 2149
3/13/17

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2149

Page 6, after line 22, replace section 8 with:

"19-03.1-23.4. Overdose prevention and immunity.

Individuals are ~~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~~8~~ of section 19-03.1-23, subsection 3 of section 19-03.2-03, and section 19-03.4-03 if ~~that individual~~ those individuals in good faith seek medical assistance for ~~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 individuals receiving immunity must have remained on the scene until assistance arrived, cooperated with ~~emergency medical services and law enforcement personnel in the medical treatment of the reported drug overdosed individual, and the overdosed individual must have been in a condition that a layperson would reasonably believe to be a drug overdose that requires immediate medical assistance.~~ need of emergency medical services. Neither the individual who experiences a drug-related overdose and is in need of medical assistance nor the cooperating individual(s) seeking emergency medical assistance may be charged or prosecuted for the above referenced criminal offenses or the sharing of controlled substances among those present. The maximum number of individuals that may be immune for any one occurrence is three individuals. Immunity from prosecution under this section only applies if the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for medical assistance. ~~is not applicable for a violation under section 19-03.1-23.1.~~ Good faith does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or a lawful search."

Renumber accordingly