

2019 HOUSE JUDICIARY

HB 1162

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB1162
1/15/2019
30826

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to multiple convictions of the same infraction; and to provide a penalty.

Minutes:

1

Chairman K. Koppelman: Opened the hearing on HB 1162.

Rep. B. Koppelman: Introduced the bill. (Attachment #1) Read testimony. (:42-2:30)

Rep. Hanson: Have you gotten feedback from the Prosecutors Association of County?

Rep. B. Koppelman: No I have not but I did run it pass a few of them and they have not offered any feedback. They should be aware of it. I did talk to the Attorney General's office to find out if this is a thing that needs to be in law?

Rep. McWilliams: Have you heard from any judges on this?

Rep. B. Koppelman: Mr. Burst has commented and I have worked closely on several bills and he has not offered comment on. No I have not. They usually track them close.

Chairman K. Koppelman: infraction is usually heard in a municipal court and I don't see them here today either.

Opposition: None

Hearing closed.

Do Pass Motion Made by Rep. Rick Becker; Seconded by Rep. Magrum

Discussion: None

Roll Call Vote: 13 Yes 0 No 1 Absent Carrier: Rep. Rick Becker

Closed

Date: 1-15-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1162

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 Becker Seconded By Magrum

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Rep. Buffalo	✓	
Vice Chairman Karls	✓		Rep. Karla Rose Hanson	✓	
Rep. Becker	✓				
Rep. Terry Jones	✓				
Rep. Magrum	✓				
Rep. McWilliams	✓				
Rep. B. Paulson	✓				
Rep. Paur	✓				
Rep. Roers Jones	✓				
Rep. Satrom	✓				
Rep. Simons	—				
Rep. Vetter	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Becker

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

REPORT OF STANDING COMMITTEE

HB 1162: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS**
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1162 was placed on the
Eleventh order on the calendar.

2019 SENATE JUDICIARY

HB 1162

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1162
3/6/2019
#33285 (13:51)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 7 of section 12.1-32-01 of the North Dakota Century Code, relating to multiple convictions of the same infraction; and to provide a penalty.

Minutes:

2 Attachments

Chair Larson opens the hearing on HB 1162. Senator Osland was absent.

Ben Koppelman, District 16 Representative, testifies in favor (see attachment #1)

Representative B. Koppelman: To the best of my knowledge, in both misdemeanors and felonies, we don't escalate things based on two unrelated offenses. The reason I didn't get rid of the escalation entirely in the bill, is say you have somebody come and empty a bag of garbage in the middle of the street. Police come over and write them a ticket; then they come and do it again the next day, then the next and so forth. I don't know if that was the intention behind having escalation at all, but I figured if we put some reasonable threshold that most people wouldn't cross, it would make sense and still leave that small niche for that person who has disregard for authority.

Senator Luick: Right now as the law stands, the escalation happens after the second offense no matter what the offense is. Correct?

Representative B. Koppelman: The prosecution would have to ask for the escalation. It would happen on the second offense if they wanted to do that. You would get one fine and the next one could be a misdemeanor.

Senator Luick: Why are you jumping up to three instead of just to the two?

Representative B. Koppelman: It's an arbitrary number. Infractions are low level for a reason, and they don't rise to the same concern for society as misdemeanors and felonies do. To jump on your second infraction up to a misdemeanor seems like it's missing the point

of why they're an infraction in the first place, so we wanted that bar to be set relatively high so that only the belligerent citizen would get the escalations.

Senator Luick: It jumps on the third time?

Representative B. Koppelman: It could if prosecution wants, but actually I believe it would be on the fourth. The fourth could potentially be a misdemeanor.

Senator Luick: Would you mind if that dropped to one?

Representative B. Koppelman: I don't have a problem with that; I don't think there's a big difference. Again it was an arbitrary number.

Senator Luick: I think we're jumping from a pretty rigorous penalty, to widening it out, to a freebie.

Representative B. Koppelman: Let me offer a different perspective. An infraction is still a criminal penalty, and I believe infractions can be punishable up to \$1,500.

Chair Larson: It's up to \$1,000. Our intern has provided us with this information. **(see attachment #2)**

Representative B. Koppelman: Let's say a person has a first offense littering. They probably won't fine them \$1,000, but instead perhaps \$100-200. The second offense they could fine them \$500; the third offense they can fine them \$1,000. Now the fourth offense it's a misdemeanor. You will have the ability to escalate the penalty without jumping to a misdemeanor. Let's remember that misdemeanors and felonies both have a direct impact on your employability and other things that I think are way beyond the intent of penalty from infraction.

(8:45) Steve Harstad, Special Agent for ND BCI, neutral party

Senator Bakke: Do you think this is enough of a deterrent and would deter people who are making some bad choices or do you think it should be harsher?

Agent Harstad: The limitation confuses me a bit. In given the scenario, the prosecutor can make the decision to increase to a misdemeanor or not. They have that capability to go four times if they choose to now. I think scenario based is the best way to deal with that. By forcing it to have to be the fourth time, you're taking that availability away.

Senator Bakke: You feel this would restrict attorneys and the judicial system by the language? This may force them to do things they might not otherwise feel is appropriate?

Agent Harstad: I do. The ability to know after maybe a second infraction to go to a misdemeanor, you're limiting them from having that capability. These are my opinions only; I'm not speaking on behalf of BCI.

Chair Larson: I have an amendment on another bill that would make a second time possession of a half-ounce of marijuana an infraction. That would impact a lot of other laws we might not be thinking of if we're just thinking about littering. Can you think of other examples of infractions?

Agent Harstad: I believe graffiti would be an infraction.

(12:10) Amy DeCook, Legal Counsel for NDSBA, neutral party

DeCook: I want to bring HB 1163 to the committee's attention. It seeks to change the criminal penalty for the possession of a firearm at a public school or other public gathering from a misdemeanor to an infraction, which is why I'm here watching this bill. I don't believe the bill has been assigned to committee yet, but it has passed the House.

Chair Larson closes the hearing on HB 1162.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1162
3/12/2019
#33574 (5:35)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 7 of section 12.1-32-01 of the North Dakota Century Code, relating to multiple convictions of the same infraction; and to provide a penalty.

Minutes:

No Attachments

Chair Larson begins discussion on HB 1162. Senator Osland and Senator Myrdal were absent.

Chair Larson: This is the one that keeps something an infraction.

Senator Bakke: Where there are multiple convictions on the same offense.

Chair Larson: If we do move marijuana to an infraction on a second offense, with this you can have up to four of them. There was another bill in Education that Senator Schaible mentioned to me that would be a concern. Some are trying to make it an infraction to be in possession of a weapon on a college campus. I don't know if we want to let multiple times of that happening without an increased penalty.

Senator Bakke: Wasn't the example for this bill those who keep going through stop signs?

Chair Larson: or littering. However, these infractions reach beyond.

Senator Bakke: It says that after the third one in a year, it would be a class b misdemeanor

Chair Larson: Right, otherwise you keep getting infractions.

Vice Chairman Dwyer: We also had a bill in Transportation where this infraction business was a concern if we did this.

Senator Luick: Motions for a Do Not Pass.

Vice Chairman Dwyer: Seconds.

Senator Luick: This will be too confounding to the other processes dealing with penalties in other parts of law. In my mind it's not worth manipulating this for whatever else is involved in century code.

Senator Bakke: It would impact other parts of the century code?

Senator Luick: Definitely.

Chair Larson: There are several other statutes that have a step-up in penalty if you reoffend. This bill allows you to have an infraction four times before it steps up.

Senator Luick: As it is today, the judge has the discretion; this would not allow that to happen.

Vice Chairman Dwyer: We have passed bills that defer to the courts to use their discretion as to what's best for each individual situation, and we'd be taking that away by doing this. That's why I oppose it.

A Roll Call Vote was Taken: 4 yeas, 0 nays, 2 absent. Motion carries.

Senator Bakke will carry the bill.

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1162**

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 Luick Seconded By Vice Chairman Dwyer

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	AB				
Senator Osland	AB				

Total (Yes) 4 No 0

Absent 2

Floor Assignment Senator Bakke

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

REPORT OF STANDING COMMITTEE

HB 1162: Judiciary Committee (Sen. D. Larson, Chairman) recommends **DO NOT PASS** (4 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1162 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1162

#1
HB 1162
1-15-19
pg 1

HB 1162

Mr. Chairman and Members of the House Judiciary Committee,

My name is Rep. Ben Koppelman, and I represent District 16 in West Fargo. Thank you for the opportunity to introduce this bill to your committee. HB 1162 would change the number of previous infractions within a year that would be required before escalation of the penalty could be considered. It also would require that they be the same type of infraction in order to consider escalation.

Under current law, a prosecutor could seek to punish a person's second infraction within a year as a misdemeanor even if the infractions are unrelated. For example, if a person was to commit an infraction under Subsection 3 of 23-29-05.1 of the Century Code related to littering or open burning on March 15, and then committed an infraction under Subsection 1 of 12.1-28-02 of the Century code relating to gambling on a private premises on August 3, the gambling infraction could be punished as though it was a misdemeanor. Although I am not aware of this escalation provision being used very often, I do think that escalating the punishment based on a correlation of unrelated offenses seems odd.

Under the revised language in this bill, a person would have to have committed a gambling infraction 3 times within a year prior to prosecution seeking misdemeanor punishment on the fourth offense. This seems more equitable since it requires a pattern of disregard for a certain law, that after the first few times, the offender ought to be aware. It also provides a solution for a belligerent citizen that seems undeterred by the penalty for an infraction.

Thank you for the opportunity to share my thought with you, and I ask that you recommend Do-Pass on HB 1162.

#1
HB 1162
3.6.19

HB 1162

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Under the revised language in this bill, a person would have to have committed the same infraction 3 times within a year prior to prosecution seeking misdemeanor punishment on the fourth offense. This seems more equitable since it requires a pattern of disregard for a certain law, that after the first few times, the offender ought to be aware. It also provides a solution for a belligerent citizen that seems undeterred by the penalty for an infraction.

Thank you for the opportunity to share my thoughts with you, and I ask that you recommend Do-Pass on HB 1162.

**CHAPTER 12.1-32
PENALTIES AND SENTENCING**

#2
HB 1162
3.6.19

12.1-32-01. Classification of offenses - Penalties.

Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.
2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of twenty thousand dollars, or both, may be imposed.
3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of twenty thousand dollars, or both, may be imposed.
4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
5. Class A misdemeanor, for which a maximum penalty of imprisonment for three hundred sixty days, a fine of three thousand dollars, or both, may be imposed.
6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand five hundred dollars, or both, may be imposed.
7. Infraction, for which a maximum fine of one thousand dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

12.1-32-01.1. Organizational fines.

Any organization, as defined in section 12.1-03-04, shall, upon conviction, be subject to a maximum fine in accordance with the following classification:

1. For a class A felony, a maximum fine of one hundred thousand dollars.
2. For a class B felony, a maximum fine of seventy thousand dollars.
3. For a class C felony, a maximum fine of fifty thousand dollars.
4. For a class A misdemeanor, a maximum fine of thirty thousand dollars.
5. For a class B misdemeanor, a maximum fine of twenty thousand dollars.

Nothing in this section shall be construed as preventing the imposition of the sanction provided for in section 12.1-32-03, nor as preventing the prosecution of agents of the organization under section 12.1-03-03.

12.1-32-02. Sentencing alternatives - Credit for time in custody - Diagnostic testing.

1. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
 - a. Payment of the reasonable costs of the person's prosecution.
 - b. Probation.
 - c. A term of imprisonment, including intermittent imprisonment:
 - (1) In a state correctional facility in accordance with section 29-27-07, in a regional corrections center, or in a county jail, if convicted of a felony or a class A misdemeanor.