



NORTH DAKOTA HOUSE OF REPRESENTATIVES

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Speaker of the House

Testimony in support of House Bill 1287

Mr. Chairman and Members of the House Judiciary Committee, today, I bring House Bill 1287 before you and encourage your favorable consideration of this bill. The bill seeks to make two constructive changes to North Dakota law.

The first is to make the penalties, under law, for actions which result in the death of another person, consistent. The second is to close a dangerous loophole in current law.

When even activity such as driving an automobile results in the death of another person, enhanced penalties are available and such charges can be brought, when appropriate, yet when the actions of the drug traffickers who are profiting from pushing illegal drugs in our communities, often resulting in the addiction of young people and adults, alike, result in an overdose so severe that the it kills the user, the penalty is the same as that for merely distributing a controlled substance. In other words, there is no enhancement of penalty available, as there is for other offenses. This is a flaw in the North Dakota Century Code which needs to be fixed.

This bill, therefore, creates the availability of an enhanced charge in the most egregious circumstances. This, of course, would be based upon the facts of each case as well as the evidence available and prosecutors, working with law enforcement officials, would determine when and if bringing such an enhanced charge would be appropriate.

With the proliferation of drugs and the rates of addiction in our state, this is an important enhancement to help reduce this problem.

You may recall that, in recent years, we have passed legislation involving drug overdoses which is sometimes referred to as a Good Samaritan Law. This statute provides that people will not be prosecuted if they call for help when someone is experiencing an overdose. This is a good law and it can save lives by removing the fear of prosecution which can delay or prevent the response necessary to save the life of someone in this condition.

There is a problem with this law, however, stemming from the language which also exempts from responsibility, those who are merely “sharing” drugs at such an event. The problem lies in the term “sharing”. There is no definition of the word in the law and drug traffickers can hide behind the term “sharing” if there is not conclusive proof that they were actually trafficking, delivering or selling the drugs. As a result, those who are providing these addicting and frequently deadly substances, and making a lot of money doing it, often escape responsibility for their actions.

There are a few ways this problem might be solved. One, as the bill before you, in its original form, provides, is simply removing the language involving “sharing” from the statute. If there is concern that this might thwart the intent of the original law, however, another approach may be to define “sharing” in such a way that it excludes drug traffickers, while still holding harmless those who the law originally sought to protect.

We need to solve the problem without causing doubt about the immunity the statute originally offered, which could delay or prevent the call for help we all want to occur.

Mr. Chairman and Members of the Committee, I am providing two potential amendments for your consideration and I trust your judgment, after your deliberations, to put this bill in the best form possible, after which I encourage your “Do Pass” recommendation for House Bill 1287.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1287

Page 1, after line 13, insert:

"1."

Page 2, line 1, remove the overstrike over "~~or for the sharing of controlled substances among these~~"

Page 2, line 2, remove the overstrike over "~~present~~"

Page 2, after line 6, insert:

"2. As used in this section, "sharing" does not include selling, distributing, dispensing, delivering, or forcing an individual to ingest, inject, inhale, or otherwise introduce into the body, a controlled substance."

Renumber accordingly

HOUSE BILL NO. 1287

Introduced by

Representatives K. Koppelman, Jones, Klemin, Satrom

1 A BILL for an Act to create and enact subdivision d to subsection 1 of section 19-03.1-23.1 of
 2 the North Dakota Century Code, relating to an enhanced penalty for the death of an individual
 3 as a result of a drug overdose; to amend and reenact section 19-03.1-23.4 of the North Dakota
 4 Century Code, relating to overdose prevention and immunity; and to provide a penalty.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** Subdivision d of subsection 1 of section 19-03.1-23.1 of the North Dakota
 7 Century Code is created and enacted as follows:

8 d. The defendant sells, distributes, ~~shares, or otherwise provides~~ delivers, or
 9 conspires to deliver a controlled substance to an individual which results in the
 10 death of the individual due to ~~a drug overdose~~ the use of that controlled
 11 substance and the death of the individual would not have occurred in the
 12 absence of the defendant's conduct. This subdivision does not apply to an
 13 individual who is immune from prosecution under section 19-03.1-23.4.

14 **SECTION 2. AMENDMENT.** Section 19-03.1-23.4 of the North Dakota Century Code is
 15 amended and reenacted as follows:

16 **19-03.1-23.4. Overdose prevention and immunity.**

17 1. An ~~Except as otherwise provided in subdivision d of subsection 1 of section~~
 18 19-03.1-23.1, an individual is immune from criminal prosecution under sections
 19 19-03.1-22.1, 19-03.1-22.3, 19-03.1-22.5, subsection 7 of section 19-03.1-23,
 20 subsection 3 of section 19-03.2-03, and section 19-03.4-03 if in good faith that
 21 individual seeks medical assistance for another individual in need of emergency
 22 medical assistance due to a drug overdose.
 23 2. To receive immunity under this section, the individual receiving immunity must have
 24 remained on the scene until assistance arrived, cooperated with the medical treatment

1 of the reported drug overdosed individual, and the overdosed individual must have
2 been in a condition a layperson would reasonably believe to be a drug overdose
3 requiring immediate medical assistance. Neither the individual who experiences a
4 drug-related overdose and is in need of emergency medical assistance nor the
5 cooperating individual seeking medical assistance may be charged or prosecuted for
6 the criminal offenses listed in this section or for the sharing of controlled substances
7 among those present.

8 3. In determining whether a situation constitutes sharing under this section, a court may
9 consider factors including whether multiple individuals:

10 a. Pooled their money to purchase the controlled substance;

11 b. Used the controlled substance with the individual who overdosed; or

12 c. Were present when the overdose occurred.

13 4. An individual who delivered or possessed with intent to deliver a controlled substance
14 solely for pecuniary gain is not eligible for immunity under this section.

15 5. Immunity from prosecution under this section does not apply unless the evidence for
16 the charge or prosecution was obtained as a result of the drug-related overdose and
17 the need for emergency medical assistance. Good faith does not include seeking
18 medical assistance during the course of the execution of an arrest warrant or search
19 warrant or during a lawful search.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1287

Page 1, line 8, replace "shares, or otherwise provides" with "delivers, or conspires to deliver"

Page 1, line 9, remove "a"

Page 1, line 10, replace "drug overdose" with "the use of that controlled substance and the death of the individual would not have occurred in the absence of the defendant's conduct. This subdivision does not apply to an individual who is immune from prosecution under section 19-03.1-23.4"

Page 1, after line 13 insert:

"1."

Page 1, line 14, remove the overstrike over "An"

Page 1, line 14, remove "Except as otherwise provided in subdivision d of subsection 1 of section 19-03.1-23.1, an"

Page 1, line 18, after the period insert:

"2."

Page 2, line 1, remove the overstrike over "~~or for the sharing of controlled substances among these~~"

Page 2, line 2, remove the overstrike over "~~present~~"

Page 2, after line 2 insert:

"3. In determining whether a situation constitutes sharing under this section, a court may consider factors including whether multiple individuals:

a. Pooled their money to purchase the controlled substance;

b. Used the controlled substance with the individual who overdosed; or

c. Were present when the overdose occurred.

4. An individual who delivered or possessed with intent to deliver a controlled substance solely for pecuniary gain is not eligible for immunity under this section.

"5."

Renumber accordingly