



January 28, 2025
Senate Judiciary Committee
SB 2257
Senator Diane Larson, Chair

For the record, I am Stephanie Dassinger Engebretson, appearing on behalf of the North Dakota League of Cities (NDLC). I am the deputy director and attorney for the NDLC. The NDLC supports SB 2257, which is a technical fix to the enhancement of penalties for shoplifting offenses that the North Dakota Legislature passed in 2021.

In 2021, the North Dakota Legislature passed SB 2166 to address concern about increased shoplifting in retail establishments. Under that bill, the first offense of shoplifting is a class B misdemeanor but:

- A second, third, or fourth offense of shoplifting occurring within three years is a class A misdemeanor.
- A fifth or subsequent violation of shoplifting occurring within three years is a class C felony.

Please note that the NDLC did not take a position on SB 2166 during the 2021 Legislative Session; however, it has come to the NDLC's attention that some district courts have been interpreting the language in SB 2166 to mean that municipal court shoplifting convictions do not count to enhance the penalties of subsequent shoplifting charges.

By way of example, in a 2023 Ward County District Court case, a defendant was charged for a class C felony of shoplifting based on it being the defendant's 4th shoplifting charge in three years. In that case, two of the defendants' shoplifting convictions were in district court and one of the defendant's shoplifting charges was in municipal court. In that case, the Ward County District Court found that the municipal court conviction did not count as the third conviction for purposes of charging the defendant with class C felony shoplifting.

The legal reasoning being applied for not counting a municipal conviction is that the language in SB 2166 did not include the words "or equivalent ordinance." Here's a snippet from the District Court's opinion:

[¶8] To reiterate, the theft enhancement statute under which Quitt was charged

states:

A second or third offense under paragraph 1 of subdivision a occurring within three years is a class A misdemeanor. A fourth or subsequent violation under paragraph 1 of subdivision a occurring within four years is a class C felony.

N.D.C.C. § 12.1-23-05(5)(c). Quitt is correct that, on its face, the statute expressly

references itself when stating the qualifying prior offenses for enhancement.

[¶9] The Legislature's approach to theft enhancement statute(s) are significantly differ

from its statutory approach to DUI enhancement. See N.D.C.C. § 39-08-01(3), (4).

An individual violating this section **or equivalent ordinance** is guilty of a class B misdemeanor for the first or second offense in a seven-year period, of a class A misdemeanor for a third offense in a seven-year period, and of a class C felony for any fourth or subsequent offense within a fifteen-year period. The minimum

SB 2257 adds the language "or an equivalent ordinance" to subsection 5 of section 12.1-23-05 of the North Dakota Century Code to ensure that it is clear under the law that municipal court shoplifting convictions count for enhancing the shoplifting penalty for subsequent shoplifting charges within three years.

The NDLC respectfully requests a Do Pass recommendation on SB 2257 to fix the technical concern with the shoplifting statute and to make sure the intent of the legislature is carried out with respect to shoplifting violations.