

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2211

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Deanna Bell  
Operator's Signature

10/17/03  
Date

2003 SENATE JUDICIARY

SB 2211

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10/17/03  
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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2211

Senate Judiciary Committee

Conference Committee

Hearing Date 01/22/03

Tape Number	Side A	Side B	Meter #
1	X		46.9 - 49.0
2	X		14.5-25.0
Committee Clerk Signature <i>mz [signature]</i>			

Minutes: **Senator John T. Traynor, Chairman**, called the meeting to order. This was a joint Session with House Representatives Roll call was taken and all committee members present.

Sen. Traynor requested meeting starts with testimony on the bill.

**Testimony in support of SB 2211**

Wayne Stenehjem Introduced the Bill (Tape 1, Side 1, meter 17.8 to 40.1)

Senator Stanley W. Lyson, Vice Chairman introduce bill (Tape 1, Side 1, meter 46.6) I was a member of the commission of Drug and Alcohol. We went around the state and had fantastic meetings. One of the troubling things in regards to this drug is the paranoia that many users develop and the addiction grows more serious with the use of the meth. Accompanying the paranoia is the use of weapons. Many Law enforcement members report the growing numbers of incidences of methamphetamine and guns and other weapons. This bill amends the law to require a judge to add four years to the sentence to those individuals who are dealing or

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Bill/Resolution Number 2211  
Hearing Date 01/22/03

manufacturing meth and are arrested with a dangerous weapon. This will give the message of the seriousness of being armed and using meth.

Robert Bennett - Assistant Attorney General -(tape 2, side 1, meter 14.6) Attachment #1 Read Summary of 2211.

Senator Thomas L. Trenbeath question amounts of drugs found on an individual who has a gun. concern for a non-dealer is not going to get locked up in prison. Simple possession that are felonious.

Requested copy of drugs, amounts and penalties under State Law 19-03.1-23 (meter 23.3) Attachment #2.

Scott Bushum Sheriff of Williams Co. , President of Sheriff Deputies Assoc. (meter 24) We have been over loaded with the Meth problem, both financially and physically. While I am a firm supporter of the second Amendment, I do not believe that people in a drug induced psychosis should or going to get there shortly have any business having a gun

Srg Pat Clause, Fargo Police Dept -Police Narcotic/Gang Unit. There is a greater use of Drugs and guns. Sited example (meter 24)

**Testimony in opposition of SB 2211:**

none

**Testimony Neutral to SB 2211:**

.none

**Senator John T. Traynor, Chairman closed the hearing**

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2211

Senate Judiciary Committee

Conference Committee

Hearing Date 01/27/03

Tape Number	Side A	Side B	Meter #
1	X		1.9 -16.0
Committee Clerk Signature			

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with committee work on the bill.

**Testimony in support of SB 2211**

Sandi Tabre - Reviewed the discussion of the bill. (meter 2.2) The Attorney General asked if we may put an emergency clause on this bill. I will pass out the amendment for this. (Attachment #1) The State of ND has gone from 27 incidences from a Meth stop that a person had a gun or a dangerous weapon in possession to 87. The police are in greater concern for their safety

Bob (did not state name) Senator Thomas L. Trenbeath why are we paying the Judges so much money to make these decisions and are trying to make them in legislation? (discussion 5.4)

Senator John T. Traynor, Chairman Noticed that there was no fiscal not present. Did they not think the extra prison time would cost anything? Bob responded that he did not know.

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Hearing Date 01/27/03

Sandi Tabre responded that Appropriations were to figure out the fiscal notes not us. Senator Thomas L. Trenbeath asked if the N D Department were in agreement with this. Sandi responded that one person was on the board of this committee and she assumed so. Senator Thomas L. Trenbeath remind her how they were in last session trying to cut good time for the most serious felons because they were overcrowded. Right. So they have changed that position?

Senator Stanley W. Lyson, Vice Chairman talked about a prior legislative case regarding armed robbery Vs un-armed robbery. (meter 8.6)

Senator Thomas L. Trenbeath responded that "Hanging does not deter murder" and he could not agree with him more.

**Testimony in opposition of SB 2211:**

none

**Testimony Neutral to SB 2211:**

none

**Motion Made to Do Pass amendment #1 Emergency Clause to SB 2211 Senator Carolyn**

Nelson, seconded by Senator Dennis Bercier

**Roll Call Vote: 5 Yes. 1 No. 0 Absent**

**Motion Passes**

**Motion Made to pass SB 2211 by Senator Stanley W. Lyson, Vice Chairman and seconded**

**Senator Carolyn Nelson**

**Roll Call Vote: 5 Yes. 1 No. 0 Absent**

**Motion carried, amendment passed.**

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01/27/03  
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Senate Judiciary Committee  
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Hearing Date 01/27/03

**Floor Assignment Senator Stanley W. Lyson, Vice Chairman**

Senator Thomas L. Trenbeath discussed how we after just giving Judges a hefty salary increase to make the decisions. How 10-15 years legislative mandating made the correctional facility budget has gone from \$40 mil to \$130 million. We need to let the Judges do what they are paid to do. Senator Stanley W. Lyson, Vice Chairman responded that the bill is a deturent but if all judges do not do it. It will lose any power.

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01/17/03  
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**FISCAL NOTE**  
 Requested by Legislative Council  
 01/30/2003

Amendment to: SB 2211

1A. **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.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>						
<b>Appropriations</b>						

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

No fiscal effect is expected with implementation of this bill. Presently the DOCR has no individuals in its custody that have been convicted under the section of law being amended by this bill. As a result, it is the DOCR's best estimate that this bill will have no fiscal effect.

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.*

No fiscal effect

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.*

No fiscal effect

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

No fiscal effect

<b>Name:</b>	Dave Krabbenhoft	<b>Agency:</b>	DOCR
<b>Phone Number:</b>	328-6135	<b>Date Prepared:</b>	01/30/2003

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*Dianne Hall*  
 Operator's Signature

01/17/03  
 Date



38293.0101  
Title.0200

Adopted by the Judiciary Committee  
January 27, 2003

*JEB*  
1-29-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2211

Page 1, line 2, remove "and" and after "penalty" insert "; and to declare an emergency"

Page 1, after line 22, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

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*Deanna Hall*  
Operator's Signature

10/17/03  
Date

Date: January 27, 2003  
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2211

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Amended #1

Motion Made By Senator Carolyn Nelson Seconded By Sen. Bercier

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath		X			

Total (Yes) FIVE (5) No ONE (1)

Absent Zero (0)

Floor Assignment Senator Stanley W. Lyson, Vice Chairman

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

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Deanne Hall 10/17/03  
Operator's Signature date

Date: January 27, 2003  
Roll Call Vote #: 2

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2211**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS as Amended

Motion Made By Senator Stanley W. Lyson, Seconded By Senator Carolyn Nelson

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath		X			

Total (Yes) FIVE (5) No ONE (1)

Absent Zero (0)

Floor Assignment Senator Stanley W. Lyson, Vice Chairman

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

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Deanne Hollis  
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10/17/03  
Date

REPORT OF STANDING COMMITTEE (410)  
January 29, 2003 2:25 p.m.

Module No: SR-17-1301  
Carrier: Lyson  
Insert LC: 38293.0101 Title: .0200

REPORT OF STANDING COMMITTEE  
SB 2211: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS**  
**AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY,  
0 ABSENT AND NOT VOTING). SB 2211 was placed on the Sixth order on the  
calendar.

Page 1, line 2, remove "and" and after "penalty" insert "; and to declare an emergency"

Page 1, after line 22, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency  
measure."

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

SR-17-301

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10/17/03  
Date

2003 HOUSE JUDICIARY

SB 2211

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10/17/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2211

House Judiciary Committee

Conference Committee

Hearing Date 3-5-03

Tape Number	Side A	Side B	Meter #
2	xx		14.9-16.5 / 20.3-21.3
2	xx		41.4-42.9
Committee Clerk Signature <i>A. Penrose</i>			

**Minutes:** 12 members present, 1 member absent (Rep. Wrangham)

The original hearing was held on January 22, 2003 in the Pioneer Room as a Joint Session with the Senate. The minutes are attached. Attachments can be found with the Senate minutes in the library.

**Chairman DeKrey:** We heard this bill so I would like to do committee work.

**Sandi Tabor, Deputy AG:** (See attached updated overview). This bill deals with mandatory prison term for armed offenders.

**Chairman DeKrey:** Sandi, we have been getting some letters on this one, that we have the language too broad and that if you pick someone up meth., that if they had a shotgun in the house somewhere or if they were in their vehicle, and they had a gun hanging in the gun rack behind them, that that would increase the penalty. Was that your intent or do we need to tighten that up a little bit.

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10/17/03  
Date

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House Judiciary Committee  
Bill/Resolution Number SB 2211  
Hearing Date 3-5-03

**Ms. Tabor:** I think that there is a potential that this language could cover that instance, although 19-03.1 is the controlled substance bill, which has other factors that you look at. Mr. Bennett's not here, so we are getting him to come down.

**Chairman DeKrey:** All right, let's go on to the next bill until he gets here.

**Ms. Tabor:** I think the only amendment that was done to SB 2211 was to add the emergency clause. So I think the bill is as is, except for the emergency clause.

**Rep. Eckre:** It wasn't brought up in the Senate at all about the..., I received some of the same messages that Chairman DeKrey did.

**Ms. Tabor:** No, there was no discussion about that concern. The Senate had some concerns about the whole idea of mandatory sentencing, but this is simply an amendment to an existing mandatory sentence law. That was basically the discussion in the Senate.

**Chairman DeKrey:** Thank you.

**Rep. Eckre:** Here is Bob Bennett.

**Chairman DeKrey:** Bob, we have been getting a lot of mail about the way this bill is written right now, that if someone gets picked up on meth. charges, if they have a gun somewhere in the house or in their vehicle, even though they aren't using it or loaded, there is still going to be a mandatory sentence for that.

**Bob Bennett, AG's office:** It's kind of hard to respond to the broad statement, if it happens to be in the house. SB 2211 basically just extends to the possession of, other than marijuana, other types of drugs. If the individual asks, for instance, meth. with intent to deliver or manufacturing it, it's under the same standards it would have for simple possession. It would have to be within the immediate reach and control while in the course of committing the offense.

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Bill/Resolution Number SB 2211  
Hearing Date 3-5-03

**Chairman DeKrey:** So we're not adding anything new to the statute, other than adding...

**Mr. Bennett:** All we're adding, the simple possession offenses, which will still have to involve the weapons as we would for the other offenses. The weapon would have to be possessed or within immediate reach or control while in the course of committing an offense. So those are things that will have to be established before the sentencing would be involved. All it does is add one more thing, to have 4.

**Chairman DeKrey:** That's what we wanted to know.

(Reopened later in the afternoon session)

**Chairman DeKrey:** Our question was answered about the firearm, not any different than the current law, all we are doing is adding simple possession, except for marijuana. What are the committee's wishes in regard to SB 2210.

**Rep. Grande:** I move a Do Pass. 2211.

**Rep. Eckre:** Seconded.

11 YES 0 NO 2 ABSENT DO PASS CARRIER: Rep. Delmore

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10/17/03  
Date



Date: 3/5/03  
 Roll Call Vote #: 1

**2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2211**

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep. Grande Seconded By Rep. Eckre

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre	✓	
Rep. Bernstein	AB		Rep. Onstad	✓	
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	AB				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Rep. Delmore

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

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Deanna Hall Operator's Signature 01/17/03 Date

REPORT OF STANDING COMMITTEE (410)  
March 5, 2003 3:20 p.m.

Module No: HR-39-4029  
Carrier: Delmore  
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE  
SB 2211, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO  
PASS (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2211 was  
placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-39-4029

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01/17/03  
Date

REPORT OF STANDING COMMITTEE (410)  
March 24, 2003 12:45 p.m.

Module No: HR-52-5533  
Carrier: Delmore  
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2211, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2211 was placed on the Fourteenth order on the calendar.

Introduced by Sen. Lyson, Nelson, Trenbeath  
Introduced by Rep. Grande, Herbel, Kingsbury  
A BILL for an Act to amend and reenact section 12.1-32-02.1 of the North Dakota Century Code, relating to mandatory prison terms for armed offenders; and to provide a penalty.

01/15 Senate Introduced, first reading, referred Judiciary SJ 79  
01/22 Senate Committee Hearing 10:00  
01/29 Senate Reported back amended, amendment poc y 005 n 001 SJ 181  
01/30 Senate Amendment adopted, placed on calendar SJ 188  
Second reading passed, y 034 n 013 Emergency clause carried SJ 188

01/31 House Received from Senate HJ 282  
02/04 House Introduced, first reading, referred Judiciary HJ 327  
03/05 House Committee Hearing 10:00  
03/17 House Reported back, do pass, placed on calendar y 011 n 000 HJ 923  
03/18 House Rereferred to Judiciary HJ 937  
03/24 House Reported back, do pass, placed on calendar y 011 n 000 HJ1015  
03/27 House Second reading passed, y 081 n 002 Emergency clause carried HJ1067  
03/27 Senate Returned to Senate SJ 955  
04/01 Senate Signed by President SJ1021  
04/01 House Signed by Speaker HJ1172  
04/02 Senate Sent to Governor SJ1056  
04/04 Senate Signed by Governor SJ1140  
04/04 Senate Filed with Secretary of State

2003 TESTIMONY

SB 2211

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Date

Att #1

Summary of Senate Bill 2211

Robert Bennett  
Assistant Attorney General

Section 12.1-32-02.1 of the North Dakota Century Code imposes a mandatory prison sentence of 2 to 4 years upon offenders who cause or threaten injury upon another person by use of a dangerous weapon, firearm, or explosive or destructive device while in the course of committing a felony offense. In 1993, the mandatory sentence requirements were extended to include those offenders who possess, or have within that person's immediate reach and control, a dangerous weapon, explosive, destructive device, or firearm while in the course of committing an offense in violation of subsections 1 or 2 of section 19-03.1-23 of the North Dakota Century Code.

Subsection 1 of section 19-03.1-23 prohibits the unlawful delivery, manufacture, and possession with intent to deliver or manufacture, of controlled substances. Subsection 2 of section 19-03.1-23 prohibits the creation, delivery, or possession with intent to deliver a counterfeit controlled substance.

To impose the mandatory term of imprisonment for the drug offenses, it must be established under current law that:

The offender possessed or had within that offender's immediate reach and control a dangerous weapon, explosive, destructive device, or firearm;

The possession or immediate control of the weapon occurred while in the course of committing an offense in violation of subsections 1 or 2 of section 19-03.1-23; and

The possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law.

This amendment to section 12.1-32-02.1 adds to the offenses subject to the mandatory imprisonment provision:

The unlawful possession of a controlled substance offense in violation of subsection 6 of section 19-03.1-23.

Simple marijuana possession offenses are excepted from the mandatory imprisonment requirement of section 12.1-32-02.1.

All other requirements of section 12.1-32-02.1 must be met to impose the mandatory imprisonment for the additional offenses:

The offender possessed, or had within that offender's immediate reach and control, a dangerous weapon, explosive, destructive device, or firearm;

The possession or immediate reach and control of the weapon occurred while in the course of committing an offense in violation of subsection 6 of section 19-03.1-23 (the unlawful possession of a controlled substance other than marijuana); and

The possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law.

Although simple marijuana possession offenses are excepted from the amendment, an offender who is convicted of a violation of subsection 1 of section 19-03.1-23, the unlawful delivery, manufacture, or possession with intent to deliver or manufacture, of marijuana, will continue to be subject to the mandatory imprisonment, as is the case under current the law. This is not a simple possession offense.

Meetings across the state with law enforcement officers disclosed a concern with the presence or possession of firearms by those persons possessing drugs other than marijuana, especially methamphetamine, and the danger posed by those armed persons to the officers and the public.

The same dangers were not presented with those persons who possess smaller amounts of marijuana when it is not being sold, delivered, or manufactured (grown or processed) by those individuals.

In addition, under subsection 6 of section 19-03.1-23, simple possession of one ounce or less of marijuana is a misdemeanor offense while possession of all other controlled substances, and more than one ounce of marijuana, is a felony. Excluding the simple possession of smaller amounts of marijuana will provide some boundaries to guide law enforcement, prosecutors, and the courts in application of section 12.1-32-02.1.

However, if a person possesses marijuana with intent to deliver or manufacture that drug (larger drug amounts, drugs packaged for resale, seeds and plants in a "grow" operation, as examples), current law will continue to subject an armed violator to be subject to the mandatory minimum penalties of section 12.1-32-02.1. This bill will not change that liability and potential punishment.

SB 2211 will subject those persons who possess controlled substances, other than the simple possession of smaller amounts of marijuana not possessed for delivery to others or to manufacture the drug, to these penalties. If the person possesses, or has within that person's immediate control, a dangerous weapon, explosive, or firearm while in the course of committing the offense of simple

possession of heroin, LSD, methamphetamine, or other controlled substances, the mandatory prison terms will be imposed upon that person upon a finding of guilt and compliance with the requirements of section 12.1-32-02.1.

3

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Date

AA # 1

**Proposed Amendments to Senate Bill 2211**  
January 27, 2003  
Presented by the Office of Attorney General

Page 1, line 2, after ";" remove "and"

Page 1, line 2, after "penalty" insert "; to provide an effective date; and to declare an emergency"

Page 1, after line 22, insert:

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective immediately upon its filing with the secretary of state.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

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Att. #2


1. Acetone.
2. Aliphatic hydrocarbons.
3. Amyl nitrite.
4. Butane.
5. Butyl nitrite.
6. Carbon tetrachloride.
7. Chlorinated hydrocarbons.
8. Chlorofluorocarbons.
9. Chloroform.
10. Cyclohexane.
11. Diethyl ether.
12. Ethyl acetate.
13. Fluorocarbon.
14. Glycol ether inter solvent.
15. Glycol ether solvent.
16. Hexane.
17. Ketone solvent.
18. Methanol.
19. Methyl cellosolve acetate.
20. Methyl ethyl ketone.
21. Methyl isobutyl ketone.
22. Nitrous oxide.
23. Petroleum distillate.
24. Toluene.
25. Trichloroethane.
26. Trichloroethylene.
27. Xylol or xylene.

**19-03.1-23. Prohibited acts A - Mandatory terms of Imprisonment and fines -  
Unclassified offenses - Penalties.**

1. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to

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manufacture or deliver, a controlled substance, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:

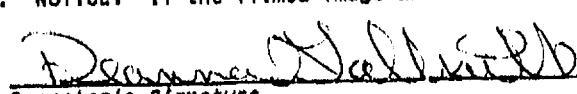
- a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class A felony and must be sentenced:
    - (1) For a second offense, to imprisonment for at least five years.
    - (2) For a third or subsequent offense, to imprisonment for twenty years.
  - b. Any other controlled substance classified in schedule I, II, or III, is guilty of a class B felony, except that any person who delivers one hundred pounds [45.36 kilograms] or more of marijuana is guilty of a class A felony. Except for a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, any person found guilty under this subdivision must be sentenced:
    - (1) For a second offense, to imprisonment for at least three years.
    - (2) For a third or subsequent offense, to imprisonment for ten years.
  - c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:
    - (1) For a second offense, to imprisonment for at least six months.
    - (2) For a third offense, to imprisonment for at least one year.
    - (3) For a fourth or subsequent offense, to imprisonment for five years.
  - d. A substance classified in schedule V, is guilty of a class A misdemeanor.
2. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, or possess with intent to deliver, a counterfeit substance, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
- a. A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.
  - b. Any other counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
  - c. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
  - d. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
3. For second or subsequent offenders, in addition to any other penalty imposed under this section, a person who violates this chapter, except a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:
- a. Any person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of

the real property comprising a public or private elementary or secondary school or a public vocational school is subject to an eight-year term of imprisonment.

- b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to imprisonment for at least eight years. It is not a defense that the defendant did not know the age of a person protected under this subdivision.
4. A person at least eighteen years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to aid or assist in the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance for the purpose of receiving consideration or payment for the manufacture or delivery of any controlled substance is guilty of a class B felony and must be sentenced:
  - a. For a second or subsequent offense, to imprisonment for at least five years.
  - b. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.
5. A violation of this chapter or a law of another state or the federal government which is equivalent to an offense under this chapter committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, 3, and 4. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.
6. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Except as provided in this subsection, any person who violates this subsection is guilty of a class C felony. If the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public vocational school, the person is guilty of a class B felony. Any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana is guilty of a class A misdemeanor. Any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana is guilty of a class B misdemeanor. Any person who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle is guilty of a class A misdemeanor.
7. A person who violates this chapter or chapter 19-03.4 must undergo a drug addiction evaluation by an appropriate licensed addiction treatment program. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. The evaluation must be submitted to the court for consideration when imposing punishment for a felony violation of this chapter or chapter 19-03.4, and may be submitted before or after the imposing of punishment for a misdemeanor violation of this chapter or chapter 19-03.4.
8. Notwithstanding section 19-03.1-30, whenever a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall expunge that conviction from the record if the person is not subsequently convicted within two

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years of a further violation of this chapter and has not been convicted of any other criminal offense.

**19-03.1-23.1. Increased penalties for aggravating factors in drug offenses.**

1. A person who violates section 19-03.1-23 is subject to the penalties provided in subsection 2 if:
  - a. The offense involved the manufacture or distribution of a controlled substance in or on, or within one thousand feet [300.48 meters] of, the real property comprising a public or private elementary or secondary school, public vocational school, or a public or private college or university;
  - b. The defendant was at least sixteen years of age at the time of the offense and the offense involved the delivery of a controlled substance to a minor; or
  - c. The offense involved:
    - (1) Fifty grams or more of a mixture or substance containing a detectable amount of heroin;
    - (2) Fifty grams or more of a mixture or substance containing a detectable amount of:
      - (a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
      - (b) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
      - (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
      - (d) Any compound, mixture, or preparation that contains any quantity of any of the substance referred to in subparagraphs a through c;
    - (3) Five grams or more of a mixture or substance described in paragraph 2 which contains cocaine base;
    - (4) Ten grams or more of phencyclidine or one hundred grams or more of a mixture or substance containing a detectable amount of phencyclidine;
    - (5) One gram, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide;
    - (6) Forty grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or ten grams or more of a mixture or substance containing a detectable amount of any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;
    - (7) Fifty grams or more of a mixture or substance containing a detectable amount of methamphetamine;
    - (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a mixture of substance containing a detectable amount of 3,4-methylenedioxy-N-methylamphetamine,  $C_{11}H_{15}NO_2$ ;

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## ENGROSSED SB 2211

### Mandatory Prison Term for Armed Offenders

To address the growing concerns regarding the number of armed methamphetamine dealers, manufacturers and users encountered by law enforcement, this bill was introduced.

Current law requires a mandatory sentence when an offender injures, attempts to injure, threatens or menaces another person with a dangerous weapon while in the course of committing:

- ▶ an offense under 19-03.1-23 (1) – willful manufacture, delivery or possession with the intent to manufacture or deliver a controlled substance;
- ▶ an offense under 19-03.1-23(2) - willful creation, delivery or possession with the intent to deliver a counterfeit substance.

The bill adds new language to include possession of a controlled substance to the list above, but would not include simple possession of marijuana. By so doing, if an offender injures, attempts to injure, threatens or menaces another person with a dangerous weapon while possessing a controlled substance, the offender will be subject to a mandatory sentence of either 4 years (class A or class B felony offense) or 2 years (class C felony offense).

At the request of the Attorney General, the Senate also added an emergency clause.

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**SB 2211**  
**Mandatory Prison Term for Armed Offenders**

To address the growing concerns regarding the number of armed methamphetamine dealers, manufacturers and users encountered by law enforcement, this bill was introduced. It amends existing law by adding possession of controlled substances as an offense triggering the additional prison years when the criminal has possession or immediate control of a weapon.

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