

2011 SENATE JUDICIARY


SB 2241

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2241
1/24/11
Job #13277

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to the grading of theft offenses for theft of a prescription drug

Minutes:

There is attached written testimony

Senator Nething – Chairman

Senator Olafson – Vice Chairman – opens the hearing on 2241

Senator Lyson – A sponsor on this bill defers to the Attorney General's office.

Julie Lawyer – Prosecutor with Attorney General's office – See written testimony.

Senator Olafson – Asks about the volume of drug be stolen or where it's stolen from.

Lawyer – Responds there is no limit on the amount of drugs taken or the kind of drug as long as it's a prescription drug. She doesn't think it should have an amount to it. She explains they are trying to make prescription theft a Class C felony.

Senator Sitte – Concerned about how many people are being put in the penitentiary. Asks if they track that.

Lawyer – Replies that between 75 and 80% of the people incarcerated currently have a drug problem. They could be in there for other offenses.

Senator Lyson – Mentions those in the penitentiary are in for other crimes but also have drug problems.

Senator Sorvaag – Asks what is the difference between Class B misdemeanor and a Class C felony.

Lawyer – Explains that a Class B misdemeanor is punishable by up to 30 days in jail and/or a \$1000 fine. Class C felony is punishable with up to 5 years in jail and/or \$5000 fine.

Senator Olafson – Asks for statistics, what is the magnitude of the problem.

Senator Lyson – Responds then you would need how many assaults, burglaries or rapes took place because of this.

Tom Trenbeth – Chief Deputy for the Attorney General – Relates that the classification of the offense often times has nothing to do with the punishment so there are no mandatory minimums associated with this.

The committee continues to discuss the amount stolen and whether it should be a Class C felony. They discuss the sentencing and the time served.

Howard Anderson – ND Board of Pharmacy – He said in some respects this doesn't go far enough because possession is not a crime just that they are stolen.

Opposition – 0

Close the hearing on 2241

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2241
2/9/11
Job #14278

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to the grading of theft offenses for theft of a prescription drug

Minutes:

Senator Nething – Chairman

The committee discusses that this provides options for prosecutors. Now the only thing they can charge for in a theft of prescription drug is based on its monetary value of the prescription. Typically the drug stolen is less than \$250.00 making it a Class B misdemeanor offense. The street value for some of these drugs is much more. With this bill it will be a Class C felony for stealing a prescription drug.

Senator Olafson motions for a do pass

Senator Lyson seconds

Roll call vote – 6 yes, 0 no

Motion carries

Senator Sorvaag will carry

Date: 2/9/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2241

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S. Olafson Seconded By S. Lyson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent _____

Floor Assignment S. Sorvaag

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

REPORT OF STANDING COMMITTEE

SB 2241: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2241 was placed on the
Eleventh order on the calendar.

2011 HOUSE JUDICIARY

SB 2241

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2241
March 15, 2011
15427

Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2241.

Julie Lawyer, Prosecutor, Attorney General's Office: Support (see attached 1).

Rep. Boehning: Under chapter 43-15.3-01, is that all prescription drugs or is it the different scheduled drugs or all prescription drugs.

Julie Lawyer: No, this would include all prescription drugs and the reason for that, as indicated. The individual, who had stolen the medication from the crash cart, did not steal any controlled substances but steal vital medication. There is no schedule that we are putting in place for theft of prescription drugs.

Rep. Onstad: There'll be no \$\$ amount on this, it's just really as you see it any amount of prescription drugs could be in this classification then.

Julie Lawyer: Correct.

Rep. Klemin: What's the current penalty?

Julie Lawyer: The current penalty would be based on the value of the medication stolen. That's the only way prosecutors have to charge it out is under the grading of the value and so typically it would be a class B misdemeanor because the value rarely exceeds \$250.

Chairman DeKrey: Thank you. Further testimony in support of SB 2241.

Tom Trenbeath, Chief Deputy Attorney General: I stand here in support of SB 2241. I don't think I have any new information, other than to give you a little perspective on the bill. That same statute, that sets the penalty phase, also sets a penalty of a class C felony for theft of ammunition. Now it doesn't say \$500 of ammunition or say those larger than 9 mm or anything of that nature. If you steal one .22 bullet, that's a

class C felony. So we're not really talking about value here, but potential for harm. That's why we are bringing the bill forward.

Chairman DeKrey: Thank you. Further testimony in support.

Howard Anderson, Executive Director, Board of Pharmacy: Support (see attached 2).

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition.

Rep. Kretschmar: Do we need to put in an emergency clause in the bill.

Tom Trenbeath: It would certainly be of value, yes.

Rep. Hogan: How do other states deal with this issue?

Tom Trenbeath: No, I don't.

Rep. Klemin: I guess I'm not sure how often someone would get convicted of a class C felony but is there room to negotiate this with plea bargaining down to something else, or is it class C felony or nothing.

Tom Trenbeath: Well, in my experience, and my experience as a defense counsel is considerable, there is always room to negotiate something. Sometimes you engage in what you and I might recognize as legal fictions, but things are never hard or chiseled in stone as they may appear in the code when it comes to getting a guilty plea, exacting a penalty.

Rep. Klemin: You will recall, some years ago, we got really aggressive on penalties and it seems like we are changing all the class A misdemeanors to class C felonies and all of a sudden the prison was full. Then we kind of backed off a little on some of them. Is this such a thing that we need to have a class C felony vs. a class A misdemeanor, or something like that.

Tom Trenbeath: I think the problem you described or the cause and effect was more due to mandatory sentencing than it was to classification of offenses.

Rep. Koppelman: I understand the need for the bill. I still have this nagging question in the back of my mind, shouldn't it be a more serious crime if there is some very dangerous controlled substance involved? It is clearly used or sold for ill-means vs. the antibiotic you received to take care of your cold over the weekend.

Tom Trenbeath: I certainly don't stand here as an expert on prescription drugs. My intuition would dictate to me that they are a prescription drug for a reason, and that's so they can't just be bought over the counter for any particular purpose that you

intend to use it for. So that tells me that a prescription drug is designed for a particular purpose, which makes it a danger any time if it's not used for that particular purpose. So that would classify all those of that nature.

Chairman DeKrey: Thank you. Testimony in opposition. We will close the hearing. Let's take a look at SB 2241. We need to put the amendment on the bill.

Rep. Maragos: I move the Attorney General's amendment to put on the emergency clause.

Rep. Kretschmar: Second the motion.

Chairman DeKrey: Voice vote, motion carried. We now have the bill before us as amended.

Rep. Maragos: I move a Do Pass as amended on SB 2241.

Rep. Beadle: Second the motion.

11 YES 2 NO 1 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Guggisberg

March 15, 2011

VR
3/15/11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2241

Page 1, line 2, replace "and" with a semicolon

Page 1, line 3, after "penalty" insert "; and to declare an emergency"

Page 2, after line 8, insert:

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

Renumber accordingly

Date: 3/15/11
 Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2241

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 11, 8224, 01001 02000

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Maragos Seconded By Rep. Beadle

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning		✓	Rep. Onstad		
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner		✓			

Total (Yes) 11 No 2

Absent 1

Floor Assignment Rep. Guggisberg

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

REPORT OF STANDING COMMITTEE

SB 2241: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). SB 2241 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "and" with a semicolon

Page 1, line 3, after "penalty" insert "; and to declare an emergency"

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Renumber accordingly

2011 TESTIMONY

SB 2241

Senate Judiciary Committee

Senate Bill 2241

Testimony of Julie Lawyer, Assistant Attorney General

January 24, 2011

Chair Nething and Members of the Committee:

My name is Julie Lawyer and I a prosecutor with the Attorney General's Office assigned to prosecute drug crimes. Prior to that, I worked for 9 years as a prosecutor with the Burleigh County State's Attorney's office. I am here this morning in support of Senate Bill 2241.

This bill proposes to make theft of a prescription drug a class C felony offense. The only mechanism prosecutors have to charge theft of a prescription drug is to determine the monetary value of the prescription and then charge the offense according to that value. Typically, the value of the drugs stolen is less than \$250, making it a class B misdemeanor offense to steal another's prescription medication.

As a drug prosecutor, I'm seeing more and more cases of involving prescription controlled substances, such as Oxycodone and Hydromorphone. There are a number of ways that people are getting these drugs, including going to multiple doctors, clinics, or hospitals to get their own prescriptions or stealing others' prescriptions.

Possession of these drugs is a class C felony, but the theft is only a class B misdemeanor. The problem isn't limited to just theft of controlled substances. In a recent case in Burleigh County, an individual went to the emergency room of a Bismarck hospital, complaining of pain in order to get controlled substances. He was eventually admitted to the hospital. During the night, he began wandering around the hospital looking for controlled substances to steal.

He found a "crash cart" in a hallway which contained emergency prescription medication. He broke into and stole some medications. None of these medications were controlled and the value of the medications he stole was under \$250, making the theft of those emergency medications a class B misdemeanor.

Luckily, in this case, another patient saw what happened and the nurses were able to recover the medication and restock the crash cart, but in that case, the theft involved emergency medications and this theft could have caused dire consequences if it had gone undetected.

The true value of prescription medications to the person who actually needs them is more than their actual monetary value and the law should reflect that.

Thank you.

Chair DeKrey and Members of the Committee:

My name is Julie Lawyer and I am a prosecutor with the Attorney General's Office assigned to prosecute drug crimes. Prior to that, I worked for 9 years as a prosecutor with the Burleigh County State's Attorney's office. I am here this morning in support of Senate Bill 2241.

This bill proposes to make theft of a prescription drug a class C felony offense. The only mechanism prosecutors have to charge theft of a prescription drug is to determine the monetary value of the prescription and then charge the offense according to that value. Typically, the value of the drugs stolen is less than \$250, making it a class B misdemeanor offense to steal another's prescription medication.

As a drug prosecutor, I'm seeing more and more cases involving prescription controlled substances, such as Oxycodone and Hydromorphone. There are a number of ways that people are getting these drugs, including going to multiple doctors, clinics, or hospitals to get their own prescriptions or stealing others' prescriptions.

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was eventually admitted to the hospital. During the night, he began wandering around the hospital looking for controlled substances to steal.

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Luckily, in this case, another patient saw what happened and the nurses were able to recover the medication and restock the crash cart, but in that case, the theft involved emergency medications and this theft could have caused dire consequences if it had gone undetected.

The true value of prescription medications to the person who actually needs them is more than their actual monetary value and the law should reflect that.

Thank you.



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State of North Dakota

Jack Dalrymple, Governor

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Senate Bill #2241
House Judiciary Committee
Prairie Room – State Capitol Building
9:00 AM Tuesday March 15th, -2011

Chairman Dekrey and members of the House Judiciary Committee, we are in support of this Bill. The Board of Pharmacy often gets questions from County states attorneys asking what they can charge an individual for, who has been picked up for stealing prescription drugs, which are not a controlled substance.

Obviously, we have plenty of teeth in the Controlled Substances Law. However, if someone steals a quantity of tramadol, which is frequently abused but not scheduled, or some of the drugs trafficked because of their unique use or value and offered for sale to school children, we have only misdemeanor theft charges for use. Even though the danger is great, the quantity may be fairly small. This gives prosecutors some ability to charge those individuals, which they would not otherwise have.

Howard C. Anderson, Jr, R.Ph.
Executive Director