

2013 SENATE JUDICIARY

SB 2141

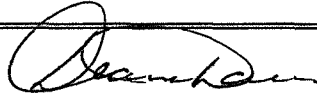
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2141
1/22/2013
Job #17504

☐ Conference Committee

Committee Clerk Signature



Minutes:

Vote included

Relating to the supervision of probations

Senator David Hogue - Chairman

Rosa Larson - Ward County States Attorney - State's Attorney's Association is also in favor of this bill. This bill is asking for on a deferred imposition of sentence that would allow the judge to impose a fine along with the deferred imposition. Another change they are asking for is to cross off the restriction of not more than one year when imposing a jail sentence along with a deferred imposition. She gives examples of young offenders. She said some need intensive inpatient treatment and the only way to get that is thru the state penitentiary system and thru their treatment facilities. She explains that if they are given under a year sentence they tend to get back into the community and back to their drugs. They need at least an 18 month sentence to get them processed thru and get them to the treatment facilities they need. She said this imposes a consequence but still keeps a conviction off of their record. This is a condition of probation.

Larson - Mentions that they have been told they need at least 18 months so they can be processed and into a treatment facility that are available thru the penitentiary system, a year and a day doesn't leave enough time. She goes on to say they don't serve the full 18 months and are usually paroled out as soon as they finish the treatment program. She says it is her experience that the best treatment that people particularly on meth and prescription pills can get has been thru the state penitentiary.

Senator Berry asks if this is something seen on a routine basis.

Larson - Responds yes that it is particularly now where in the West they are seeing an increase of misdemeanor offenses. She said a lot of employers are looking not only at felony offenses but misdemeanor offenses as well and are not hiring misdemeanor offenses either. She said if we can try to help them rehabilitate and give them a consequence it would still give them the opportunity to keep any conviction off their record for employment purposes in the future. It serves a double purpose.

Senator Armstrong - Asks Barney Tomanek if defendants that go through the intensive treatment at the Dept. of Corrections are more or less likely to reoffend.

Barney Tomanek - Director of Probation Parole Department - He said the programs are very good and certainly reduces their risk. It depends on who you compare it to.

Opposition - none

Neutral - none

Close the hearing 2141.

Committee discussions

Committee discusses how this will allow someone to clear their criminal record.

Senator Lyson motions for a do pass

Senator Berry seconds

Vote - 7 yes, 0 no

Motion passes

Senator Berry will carry

Date: 1/22/13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2141

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. Lyson Seconded By S. Berry

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment S. Berry

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

REPORT OF STANDING COMMITTEE

SB 2141: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2141 was placed on the
Eleventh order on the calendar.

2013 HOUSE JUDICIARY

SB 2141

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2141
DATE 19801
JOB March 12, 2013

☐ Conference Committee

Carmen Hecker

Explanation or reason for introduction of bill/resolution:

Relating to the supervision of probationers

Minutes:

Chairman Kim Koppelman: Opened SD 2141. This will be recessed until tomorrow.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2141
DATE March 13, 2013
JOB 19838

☐ Conference Committee

Carmen Hick

Explanation or reason for introduction of bill/resolution:

Relating to the supervision of probationers

Minutes:

Chairman Kim Koppelman: Opened the hearing on SB 2141.

Aaron Birst, North Dakota Association of Counties: The bill strikes line 24. This bill allows the courts to impose a fine when somebody receives a deferred imposition of sentence. Deferred imposition of sentence is generally given out to first time offenders, young offenders or crimes that are minor. States Attorneys have said the courts are refusing to give deferred imposition of sentences because they are not allowed to put a fine on. Therefore a suspended sentence is given where there is a fine. The courts can impose jail on a deferred imposition of sentence but not the fine. This bill clarifies that.

Vice Chairman Larry Klemin: In a situation where a court does impose a deferred imposition of sentence and a fine then later when the deferred sentencing time comes and the court dismisses it does the person who paid the fine get his money back?

Aaron Birst: No you don't get that back.

Vice Chairman Larry Klemin: I heard you say if there is a deferred imposition of sentence and the person lives up to the conditions of that deferral then your record is cleared.

Aaron Birst: Correct, your record is cleared like you never had it but the conditions of the deferred imposition were to pay the fee and ultimately the fine. So it's dismissed off your record but you have still paid the court costs and the fees and the fine or served your jail time. If you served two days in jail then go six months with no other problems the court dismisses the charge you have still served those two days in jail.

Rep. Bill Kretschmar: The language removed on page 2 line 20.

Aaron Birst: The change was more grammatical. It takes out the one year, whichever is less because that language doesn't make sense. When you have differing time period you don't get sentenced to one year whichever is less, the court sentences you to whatever they need to sentence you to. There are no separate options.

Chairman Kim Koppelman: The way that reads is serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted or one, whichever is less. That makes sense to me. Then a year would be a minimum.

Aaron Birst: This is for the probation conditions. So serving the probation the court could have you serve a total of the probation for up to one-half the maximum term authorized for what you are convicted. I'm not sure how that would play in.

Chairman Kim Koppelman: But it says serve a term of imprisonment.

Rep. Lois Delmore: I would also to change "for which" instead of "of which".

Aaron Birst: If I could step out as I know there is a better explanation for that.

Aaron Birst: I do have the subject matter of Rosa Larson, States Attorney of Ward County.

Rosa Larson: This bill was sponsored by Senator Hogue by my request because if a condition of probation you can put them in jail you should be able to fine them as well. The reason why I want that language of one year cap omitted is because we do have situations where possession of pills, possession of meth, possession of methamphetamines are all C felonies. There is nothing we can reduce that down to as a misdemeanor. There are times when treatment is the best option for them and allowing them to avoid a felony conviction on their record but they clearly have an abuse issue they need something more intensive than our local options. Our local options only give us 30 days in-patient treatment at the most and generally they don't even do the full 30 days. Experts will tell you when they are abusing those types of drugs they need intensive treatment. The only option we have available in this state is the through our penitentiary system and that is the best options. Our experts being the Department of Corrections tells us they can't deal with someone who has less than an 18 month sentence whether it's coming in the first time or on a probation of a case. When we are looking at Thompkins recommendation they need at least 18 months. They have to go through orientation, they have to have an evaluation to determine which programs are best fitted for this defendant to assist them, and then wait for the beds, and then they get into treatment. I'm asking to take that one year cap off you can leave not more than half of the sentence because at a Class C felony you two and one-half years. They are going to be able to get into the system, get their orientation, get the treatment and be released. Ward County is not using drug court like they are supposed to be. As a Prosecutor I don't often ask for or recommend a deferred sentences but if they are going to get the treatment they need rather than local. If they serve local time they don't get the treatment they need and are given work release.

Vice Chairman Larry Klemin: It seems there is two ways to what you would like to do. One is the way that is in the bill to take out one year or whatever is less. Or to say for 18 months whichever is less.

Rosa Larson: But what if they don't get into the treatment at the treatment at that time?

Vice Chairman Larry Klemin: We could say two years or whatever is less.

Rosa Larson: I would ask to strike one year less. If you are looking at Class B felonies or greater if someone has committed that I would not recommend a deferred imposition. I am looking at the Class C felonies.

Chairman Kim Koppelman: Would care you to address the other section of the bill also?

Rosa Larson: That is a consequence. If I am going to recommend a deferred imposition you are still going to have to pay the consequences if someone else in your same situation is not getting that deferred but is getting a fine. It makes sense if we give you this opportunity to keep it off your record but you still are going to have to pay some sort of consequence. They would much rather pay a fine then do community service.

Chairman Kim Koppelman: Suspended sentences have become default because of this provision?

Rosa Larson: Yes.

Chairman Kim Koppelman: What is the practical result in the difference between the two?

Rosa Larson: The practical result on a suspended sentence is then it is a conviction on their record forever. A deferred imposition gives them the opportunity to eventually get this off their record as conviction provided they do what the court ordered as a condition of probation. Employers are looking more at this especially if there are drug offences and then not hiring.

Chairman Kim Koppelman: We have discussed in several sessions to get rid of the term expunge in the law because you can't do it with computers. How do you deal with that as there is a record even though their record was supposed to be wiped clean?

Rosa Larson: I don't know how with the internet because we don't have any control over that. We always have the official record and right now that comes from BCI. So if the official record shows that this conviction is no longer on your record that is what needs to stand. I think the answer is to declare BCI the official record keeper and that's the official criminal history for a person.

Chairman Kim Koppelman: Or to demand if a record is considered expunged it really is expunged that would include arrest records at Police Departments and everything else.

Rosa Larson: Officers are ordered to destroy all of their notes and sometimes we don't even have Officers there anymore who can go back and destroy their notes. That is why I think you need to have something as the official record for that person to go back to.

Chairman Kim Koppelman: I think we are a Legislature needs to have a look at. If we have public policy that says if you do A, B, and C and we are then not going to hold it against you and then it is held against them that does become an issue.

Rep. Gary Paur: Would it be possible to get three or four deferred sentences because they have no record?

Rosa Larson: It could be possible but if it's happening in the same county it will be remembered.

Rep. Lois Delmore: Made a do pass motion.

Rep. Andy Maragos: Second the motion.

14-0-0

Rep. Kathy Hogan: Will carry the bill.

Date: 3-13-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2141

House 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 Rep. Delmore Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Hogan

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

REPORT OF STANDING COMMITTEE

SB 2141: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2141 was placed on the Fourteenth order on the calendar.