

2017 HOUSE JUDICIARY

HB 1422

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1422
2/6/2017
27916

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the penalty for delivery of alcohol to an underage individual; and to provide a penalty.

Minutes:

1,2

Chairman K. Koppelman: Opened the hearing on HB1422.

Rep. Damschen: Introduced the bill. We passed this bill a couple sessions ago in the House and it died in the Senate. There should be no cost to the industry or anyone else if it passes. It increased the penalty for delivery of alcohol to underage individuals. Discussed under aged drinking that is happening in North Dakota. (1:38-5:22) Went over the bill and binge drinking problems.

Representative Johnston: It will bump the penalty up to a felony C and it is currently a misdemeanor?

Rep. Damschen: It is an A misdemeanor or an individual 21 year or older who knowingly delivers.

Representative Maragos: Can you give me an example of unknowingly delivery versus knowingly delivery?

Rep. Damschen: I would say a person with a false ID would be unknowingly delivering alcohol to underage.

Representative Klemin: There are several places in this bill where it says it is subject to sections 5.01.08 and 5.01.08.1 and 5.01.08.2? What are those sections?

Rep. Damschen: They all seem to deal with prohibiting people under the age of 21 from using and possessing alcohol. Misrepresenting their age with false ID is one of them. One is contributing to the delinquency of minors.

Representative Klemin: I would like to know what is in section 3 of this bill on page 4? This section requires arrest and it could be read to say a law enforcement officer who has a reasonable suspicion that a person has committed a felony alcohol related offense who does not arrest that individual is guilty of a Class C felony? Was that what was intended?

Rep. Damschen: When there is a graduation party a lot of people know where the party is and that alcohol is being used and possessed by minors. It is overlooked. Law enforcement officers are put under pressure in the community to overlook this. Sports enter into it.

Representative Klemin: So it is intended if a law enforcement officer doesn't arrest someone that law enforcement officer is subject to arrest if he takes no action.

Representative Vetter: Isn't it already a crime if I give alcohol to a minor and they drive off and kill somebody I am guilty of that crime; so we are changing this from a misdemeanor to a felony.

Rep. Damschen; Yes, that is correct.

Representative Vetter: Do you feel these people are not getting charged now?

Rep. Damschen: I think it would be better to have a stiffer penalty. It is not working well now.

Representative Roers Jones: Right now it is a crime for people to have illegal drugs and yet people still managed to find sources for these things. It doesn't seem to increase the fine would help. This doesn't seem to give law enforcement or courts the discretion of what they would charge people would. What about a situation where they have a child and they chose to give a parent a 20-year-old child a drink; then they shall arrest and charge that person with a long lasting implications.

Rep. Damschen: The requirement for the law enforcement to do the arresting and for a parent giving them alcohol this doesn't change that. It is hard to know where to draw the line.

Chairman K. Koppelman: Part of your effort in your bill is to create criminal penalties for not making an arrest. Have you talked to law enforcement about this? Turning a blind eye to this.

Rep. Damschen: No I did not. I think it happens occasionally.

Chairman K. Koppelman: I sense the penalty might be harsh. People shouldn't ignore the law.

Representative Johnston: It has to be a felony C unless it falls into the guidelines of section 1, subsection 3 where did the 12-hour time frame come from?

Rep. Damschen: That is the good seminarian law.

Chairman K. Koppelman: We did pass legislation last session. It did not pass the first time it was introduced four years ago and did pass last session dealing with that issue. It was a real struggle for the legislature to decide what to do.

Opposition:

Rudie Martinson, Hospitality Association: (#1) (22:30-25:14) Went through hospital history and then testimony read.

Chairman K. Koppelman: Page 2, Section 2 uses the term permits? Is that your concern, it could be an accident and the penalty is being ratcheted up.

Rudie Martinson: Usually it is because they made a mistake and that is the concern. I don't know anyone who intentionally serves alcohol to minors.

Pat Bohm, Director for Transitional Planning Services for ND DOCR: (#2) Testimony and attachment. (27:00-30:22)

Representative Satrom: Are there any civil penalties that can be attached to this?

Pat Bohm: Yes there are. Yes if they can show a link to the action.

Representative Nelson: Is there any way to get a list of the 519 C felonies if would like to see that list.

Pat Bohm: Yes if you had people convicted of this you are looking at increasing our dockets greatly. I would hate to see a C felony attached to these folks. I do not have a specific listing of those 519. We do have 770 felonies on the books in ND.

Chairman K. Koppelman: If a law enforcement officer were charged with a C felony that would end their career?

Pat Bohm: Yes that would end their career.

Bruce Burkett, Peace Officers Association: (35:00) Everyone had stories on the side and it could screw things up for a lot of people. Three things in this bill; it goes after an establishment that serves alcohol as a business; if they screw up we can pull their licenses. The bill changes that to a C felony.

Chairman K. Koppelman: How do we stem the tide in ND with alcohol?

Bruce Burkett: Graduation parties are usually in wildlife areas with 150 kids there.

Chairman K. Koppelman: The message here is not that we turn a blind eye on alcohol here.

Myra Marsch, Student at Dickinson State University: My family has owned and operated a bar for 30 years and the implications of this bill isn't going to affect the people buying for

minors. It is going to affect the people working in the service industry. Over the last 12 years every minor that has entered Bernie's Esquire Club that was using a fake ID; I made for sure they were prosecuted. I am proud of it since I was protecting my families' business. In that 12 years I guarantee I have made a math error on somebodies age and I have unknowingly served a minor. Now if I would get in trouble for making a simple mistake. As a nursing student, if I would be fined and penalized with a felony this would put my career in jeopardy as a nurse for a simple error. It will directly relate to the service industry.

Representative Simons: If she would catch you with a fake ID you would want the cops there.

Neutral: None

Hearing closed.

Representative Roers Jones: There are lot of concerns about the constitutionality of this bill from Mark Freeze. Basically there is a lot of concerns about Section 3 talking about the police officer shall arrest; and then the attorneys shall charge. That is mandatory language plus the reasonable suspicion portion.

Do Not Pass Motion Made by Rep. Simons; Seconded by Rep. Johnston

Representative Jones: I am going to support the motion because of the concern in overloading our criminal system. I see some serious flaws in the way this is going.

Representative Klemin: Section 3 did bother me. I don't think it is going to be workable.

Chairman K. Koppelman: Reasonable suspicion was a good point. It is not even a probably cause.

Roll Call Vote: 13 Yes 0 No 2 Absent **Carrier: Representative Roers Jones**

Closed.

Date: 8-6-17
 Roll Call Vote 1

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO 1422**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Simons Seconded By Rep. Johnston

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson	✓	
Vice Chairman Karls	✓		Rep. Nelson	—	
Rep. Blum	✓				
Rep. Johnston	✓				
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum	✓				
Rep. Maragos	✓				
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment : Rep. Roers Jones

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

REPORT OF STANDING COMMITTEE

HB 1422: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO NOT PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1422 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

HB 1422

#1
1422
2-6-17

Testimony of Rudie Martinson
Executive Director, ND Hospitality Association
In opposition to HB 1422
Before the House Judiciary Committee
February 6, 2017

Good Morning Mr. Chairman and members of the House Judiciary Committee. My name is Rudie Martinson, and I am the Executive Director of the ND Hospitality Association. We are the trade association for North Dakota's restaurant, lodging, and retail beverage industries.

I rise today in opposition to HB 1422.

Let me begin by stating one thing very clearly: we in the hospitality industry have no interest in serving alcohol to minors. We invest a great deal of time and energy in training our employees in safe and legal alcohol service. In many cases, local government mandates this training. We provide a voluntary compliance checking service to our members who wish to use it, so they can have insight into whether their procedures are being followed by their staff. Finally, in 2011 we partnered with the ND University System to spearhead the passage of SB 2133, which allowed us to confiscate fake and illegally used IDs when we encounter them and take them out of the hands of kids.

HB 1422 attempts to make a felon out of every bartender, cocktail, and door person who makes a mistake. A bouncer with a line a block long, who mistakenly lets someone in who doesn't turn 21 for a few more days would be charged with a felony. A bartender at a wedding reception the whole town turns out for would be charged with a felony for doing the math wrong. And if an owner makes this mistake and is charged with a felony, he can't renew his liquor license and he's out of business.

Mr. Chairman, if this bill passes the penalty for our employees who serve minors by accident will be far higher than the penalty for the minor who deceives us on purpose. Serving minors is and should be illegal, and there is and should be a penalty for it under current law. This bill represents an attempt to expand that penalty to a point that is far out of proportion to the crime.

For these reasons, we ask for a "do not pass" recommendation on HB 1458.

Thank you

HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE KIM KOPPELMAN, CHAIRMAN
FEBRUARY 6, 2017

#2
1422
2-6-17

**PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY RE: HB 1422**

My name is Pat Bohn and I am the Director for Transitional Planning Services for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify on behalf of the department in opposition to HB 1422.

The department is generally opposed to these types of penalty enhancements. There is no evidence that this enhancement will result in a reduction in this type of behavior. By no means are we condoning this type of behavior; however, it is these types of enhancements that incrementally contribute to the growth in not only corrections, but our broader criminal justice system.

According to an article written in the National Institute of Justice Journal in September 2013, *Beyond the Sentence - Understanding Collateral Consequences* by Sarah Berson, criminal convictions bring about a multitude of sanctions and disqualifications for felony and misdemeanor convictions. This results in any conviction, but in particular felony convictions, being a life sentence. In 2007, the National Institute of Justice was directed to carry out a national survey of collateral consequences. In 2012, a National Inventory of the Collateral Consequences of Conviction was established. According to the website (<https://niccc.csgjusticecenter.org/map/>), North Dakota currently lists 535 collateral consequences to a conviction that are listed in century code and administrative code. The national database has 48,229 entries (can be duplicated from state to state. Example: Attorney disbarment state-by-state).

Our state has engaged in increasing the number of felony offenses on the books between 1997 and 2013 by 37.5% (Reference Chart 2 on page 2). We have seen 277% increase in the community supervision population between 1992 and 2017 and a 249% increase in the prison population during that same period. During this timeframe we have only seen an 18.8% increase in our overall state population and that is including the growth we saw during the course of the oil boom. We have seen state correctional spending increase by \$134 million between the 2003-2005 and the 2015-2017 biennia (Reference Chart 2 on page 2)

I notice there isn't a fiscal note attached to this bill. I do think this bill would have some impact on the courts, prosecutors, indigent defense counsel, law enforcement and jails and state corrections as well as an immeasurable lifelong negative impact on individuals.

In closing, the department asks that you support a do not pass on this bill and I'd be glad to try and answer any questions.

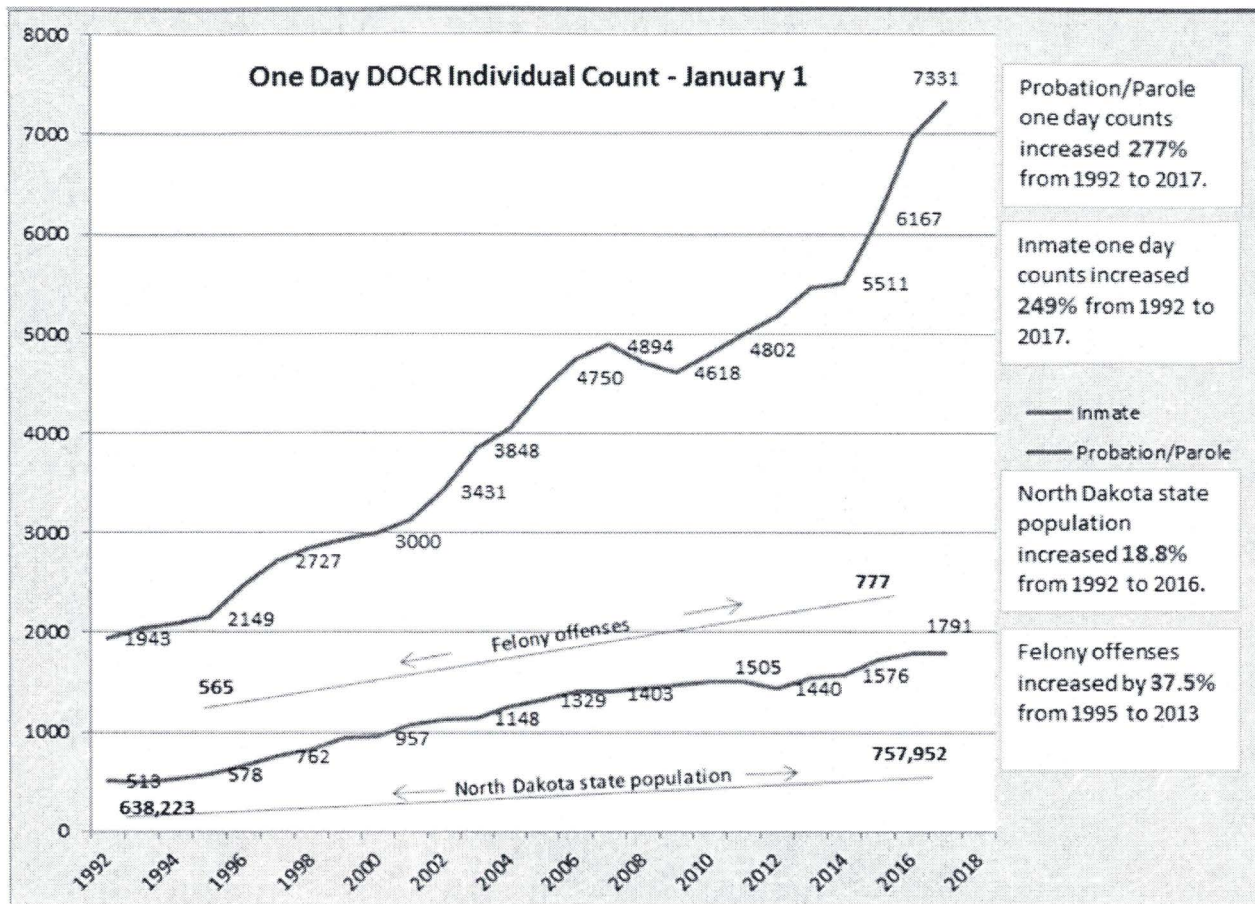


Chart 1

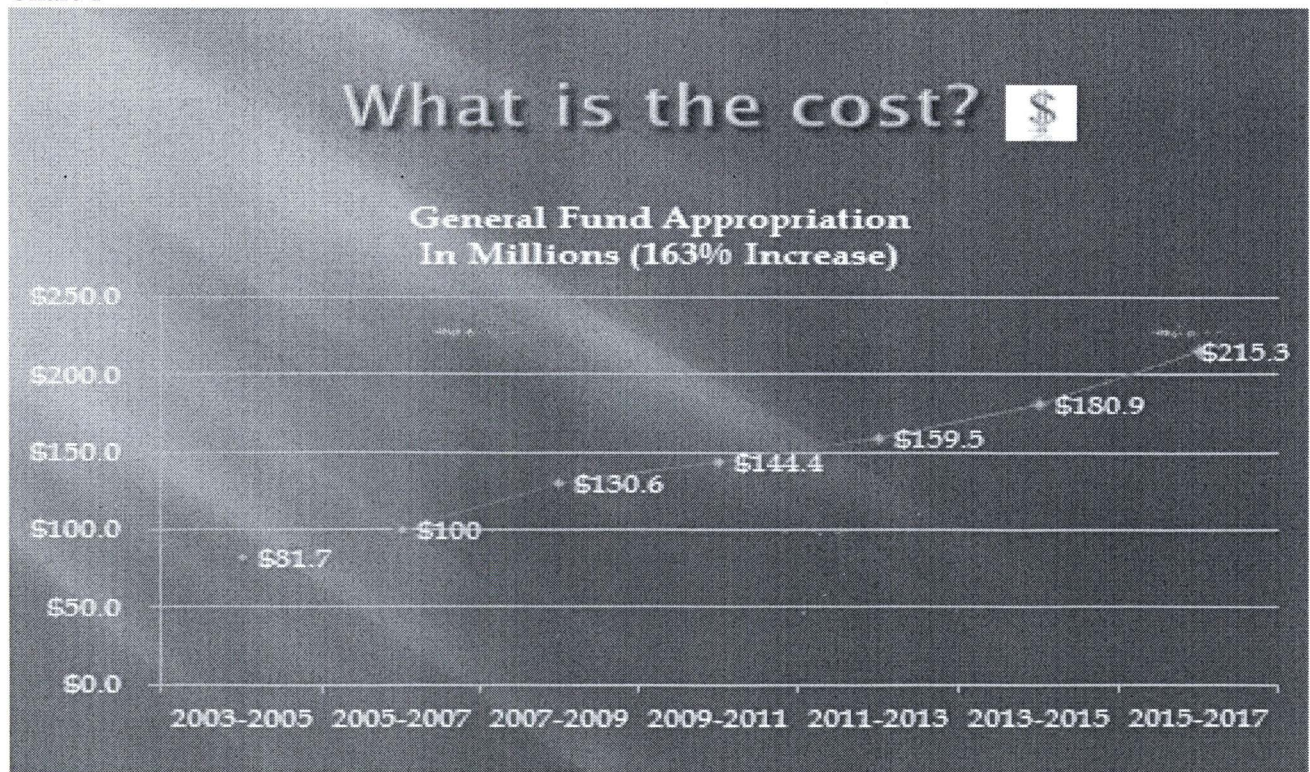


Chart 2