

2021 SENATE JUDICIARY

SB 2166

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2166
1/18/2021

A BILL for an Act to amend and reenact sections 12.1 23 05 and 12.1 23 10 of the North Dakota Century Code, relating to theft offenses; and to provide a penalty.

Chairwoman Larson [2:30] called the hearing to order
Senators present – Larson, Dwyer, Bakke, Fors, Heitkamp, Luick, Myrdal

Discussion Topics:

- Routine theft under \$500
- Class B misdemeanor
- Class A misdemeanor and resulting in a felony
- Hyper routine offenders

Senator Vedaa, District 6, testified in favor. [2:29]

Senator Oley Larsen, District 3 in favor. [2:31]

Wayne Stenehjerm, Attorney General in favor of SB 2166. [2:31]

Jeff Hinz, owner of Kirkwood Ace Hardware in favor #1250. [2:43]

Arik Spencer of the Greater ND Chamber in favor. [3:00]

Tyler Halm, Vice President of SCHEELS in favor #1261 [3:01]

Eric Goerdt, Executive Team Leader of Asset Protection, Target Corp, in favor #1265 [3:14]

Jennifer Wilson, General Manager of the Kirkwood Mall, in favor #1271 [3:24]

Mike Rud, ND Retailers Association, orally in favor [3:36]

Senator Myrdal moved to adopt amendment on SB 2166 to add an emergency clause.
[3:38]

Senator Luick second

Senators	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passed 7-0-0

Senator Myrdal moved DO PASS as Amended [3:39].

Senator Bakke second

Senator Myrdal withdrawals motion DO PASS as Amended [3:40].

Senator Bakke withdrew second

Senator Luick proposes an amendment on Page 3, line 3 to remove “or fourth” and on page 3, line 4 replace “fifth” with “fourth” [3:41].

Senator Heidkamp second

Action on motion will be held until next committee work.

Chairwoman Larson closed the hearing at 3:44 pm

Jamal Omar, Committee Clerk

Testimony in support of SB2166

January 18, 2021

Jeffrey Hinz

Kirkwood Ace Hardware

Good morning, I'm Jeff Hinz, the owner of Kirkwood Ace Hardware in Bismarck.

Shoplifting has been an ever present problem in all the years I have owned my store. The retailer's lost revenue is reflected in higher prices to the consumer, the lack of business development or hiring new workers due to financial constrictions, and in many cases, stores closing because of the losses.

In recent the years the problem has become much more prevalent. There are a few major issues that have helped to create this condition and I believe your action could help.

First, the shoplifter believes nothing will happen to him if he is caught. Basically, this is true. An example I can give you is a gentleman that concealed 4 DeWalt batteries, about \$450 in value. We detained him, called the police and he said "are you really going to waste your time with this? I'm going to be out of there in 20 minutes, back in here stealing again and there is not a (blanking) thing you can do about it." He was wrong on only one thing, he was out in 35 minutes. Fargo police announced in August 2019 that they basically would not work on shoplifting cases less than \$500 because they are overwhelmed. Well, they're overwhelmed because the same guys keep doing it over and over and over, because there is no real penalty. In California nothing is done for less than \$1000 and it is a free for all for shoplifters.

Second, it's easy to cash in on stolen goods. A chain saw stolen from us was at a local pawn shop within half an hour. A brand new saw, no gas or oil in it, never used, with our price tag and a warranty card not filled out, but a pawn shop then has more rights to that saw than I do. There is no way they didn't know it wasn't stolen. Yes the thief was identified, no nothing happened to him. Facebook marketplace also operates to their advantage. Today on the local page there are tons of DeWalt tools, brand new in the box, for sale. No one is buying brand new tools and then selling them for half of what they paid. It's stolen goods. We've had to chain off our tool aisles because we can't take the constant hit anymore. In the last 5 years I have lost more money in stolen power tools than we have made, but chaining it off limits our good customers from shopping and will limit our legitimate sales.

Third, the thieves have learned that violence pays. Most major chains nationwide prohibit their employees from confronting a violent shoplifter, or one that has physically left the store, for fear of lawsuits. The criminals have learned that if they react violently, their chance of being left alone is pretty good. If they can get the cart out the door into the parking lot they are home free. The chainsaw I mentioned was a violent theft. Grab and run, and he physically attacked my son. The days of the quiet stealthy concealment are over. In my store they grab the items and bolt for the door, pushing customers and employees aside. I have been physically assaulted MANY times by shoplifters. They often make the bold claim "you can't touch me"

Many times you hear the repeated myths about an innocent mistake, my first time, just trying to feed my family. This is bull. These are habitual, hardened criminals. Most retailers in town know their

names, their vehicles, their friends, and what they like to steal. It's the same folks over and over and over. They are connected and often work together. It is a mob business.

Here is how you can help us. Give them a real penalty. Jail, fine, AND restitution to the retailer. If your heart just can't ruin a first time offender's life, maybe you can find a way to deal with his second, third, or 40th time.

Next, please assign a harsh penalty for any theft that threatens employees or customers of the business, and please, protect us from their legal threats. Allowing this physical assault trend to continue will only increase the amount of shoplifting and encourage bolder hostile actions.

We small business people face an onslaught of difficulties. New harmful tax proposals, higher minimum wage laws, and competing with online entities that do not have to deal with these shoplifting issues. If you value your North Dakota retailer partners and would like to continue to see open retail stores rather than barred windows, merchandise behind counters, and cashiers in secure booths like in metro areas, we could use your help. Please support SB2166

Jeffrey Hinz

Kirkwood Ace Hardware

701-471-2710

Testimony – SB 2166
January 18, 2021 – Senate Judiciary Committee

Madam Chair Larson and Members of the Senate Judiciary Committee:

For the record, I am Tyler Halm, Vice President of SCHEELS and current Store Leader of the Bismarck SCHEELS store. SCHEELS has 4 retail locations in the state of North Dakota. I am also a board member of the North Dakota Retail Association where are membership represents over 700 retail store fronts in North Dakota. All ND retailers deal with varying degrees of retail theft, with the majority of them seeing an uptick in recent years, some seeing a substantial uptick. Specifically we have noticed a trend with repeat offenders. SCHEELS and our Association urges a **“Do PASS” recommendation on SB 2166.**

I want to start off sharing information from the National Retail Federation in a report they published on July 14th, 2020 in regards to national trends with retail theft. They estimated that theft, fraud and losses totaled \$61.7 billion in 2019, up from \$50.6 billion the year before. According to the report, shrink averaged 1.62 percent of sales during 2019, up from 1.38 percent in 2018 after hovering around 1.4 percent over the past few years. I can speak specifically to SCHEELS and can assure you that the trends in ND coincide with the national average for 2018 and 2019. We have yet to see national statistics for 2020, but SCHEELS stores have seen an increase again in 2020 over previous years.

SCHEELS is a private company, we keep our numbers and statistics private, but I can tell you that in 2020 we saw 460 shoplifting prosecutions out of our 4 ND stores. Our Bismarck location saw 149 shoplifting prosecutions, with 12% of those being repeat offenders to SCHEELS, not just repeat shoplifters, but repeat shoplifters to Bismarck SCHEELS. We saw an additional 36

suspects in our Bismarck location that were uncooperative and refused to stop in 2020. This number is up from only 13 in 2019, or nearly 3 times more than the previous year.

Rising incidents in theft, along with the increase in multiple offenders is largely due to the fact that criminals know if they stay below the felony threshold they are less likely to get prosecuted. Members of ORC gangs along with professional criminals often make multiple small thefts, staying below the felony threshold to avoid prosecution, which is why we are asking for repeat offenders to be aggregated and counted toward a felony threshold to reflect the serious nature of organized theft.

With the increase in "multiple offender" shoplifters it has created a more brazen shoplifter. They are educated as to what they can and cannot do to avoid an apprehension and they are not afraid to use it against us and/or put our staff and public in danger. I employ 2 Full Time associates and 6 Part Time associates in the Bismarck SCHEELS location just to combat this behavior. These are regular Men and Women who in the process of stopping shoplifting have apprehended individuals with drugs, drug paraphernalia, knives and even loaded handguns in 2020. I'm fearful that if we do not take a more aggressive approach today it will only be a matter of time before we're dealing with a more serious situation.

Let's continue to stay a step ahead of the criminals and get in front of this trend we are seeing by passing SB 2166. Again, SCHEELS and NDRA urges a **"Do PASS" recommendation on SB 2166.**

Multiple Offenders per Public Records as of 1/18/2021

Brently IronRoad – 42 Theft of Property Charges, 48 Trespass Charges

Shawn Felch – 28 Theft of Property Charges, 31 Trespass Charges

Monica Acevedo – 16 Theft of Property Charges, 1 Trespass Charge

David Reamann – 11 Theft of Property Charges

Joe Johns – 10 Theft of Property Charges, 10 Trespass Charges

Testimony – **SB 2166**

January 18, 2021 – Senate Judiciary Committee

Madam Chair Larson and Members of the Senate Judiciary Committee:

I'm Eric Goerdt, Executive Team Leader of Asset Protection, along with Andrew Seter, Store Director at Target Corporation presenting on behalf of the NDRA concerning retail theft. We stand with other retailers regarding a need for tougher penalties on retail theft crimes across the state of ND. Our Bismarck store generated \$64 million dollars in sales last year, with shortage totaling \$640,000. **TARGET urges a "DO PASS" recommendation on SB 2166.**

What is most important to us and other retailers is the implementation of harsher penalties for repeat shoplifters. In the past 3 years our Bismarck location has seen an increase in annual shortage from \$310,000 to \$640,000. This is largely due to repeat shoplifters that have been apprehended and charged out numerous times. When they are released, they are impacting our stores or other retailers again. From 2019 – 2020, our Bismarck location has seen an increase of 30% of *known* incidents and roughly \$55,000 impact, a 40% increase. These repeat subjects continue to impact our stores and when confronted, state they are not concerned with getting arrested by Law Enforcement under the current penalties. With the scope of our state, Target locations have seen a spike of 40% more incidents with a total of \$250,000 of possible shortage impact in four stores. Many of these incidents are from *known* shoplifters that have been charged out with theft in the past from Target or other retailers. To highlight the impact of theft on our business's margin, if a Dyson Vacuum Cleaner or a TV gets stolen, we would need to sell 4 or 5 more just to break even. Over time these incidents lead to higher overall costs to our business and the consumer.

From a team member and public safety standpoint, our teams and guests/customers are more at risk than ever before. Weapons are being used to defeat merchandise protection, physical confrontations have risen, and the use of Emergency Exits to flee stores have increased. We, as retailers feel that stronger penalties for repeat offenders along with harsher penalties for those that fight or run will help keep a critical percentage of repeat subjects out of our stores benefitting both communities and businesses across the state. **TARGET urges a "DO PASS" recommendation on SB 2166.**

Testimony – SB 2166

January 18th, 2021 – Senate Judiciary Committee

Madam Chair Larson and Members of the Senate Judiciary Committee:

For the record, I am Jennifer Wilson, General Manager of Kirkwood Mall in Bismarck. I am here to represent over 160 retail store fronts at both Kirkwood Mall and Dakota Square Mall in Minot of which 60% are national or regional tenants and 40% ND owned businesses. Our store owners, managers, loss prevention teams and security teams do all they can every day to protect their employee's safety and product from the overwhelming number of repeat thieves. Our Malls and Retailers urge a **"DO PASS Recommendation of SB 2166"**.

Employee, management and customer safety, retention of product and consequences to stop repeat theft by repeat offenders in North Dakota retail establishments is the most important focus. Retail theft has been increasing for several years, but the accelerated increase in repeat theft with threat of violence and violence in most recent years is cause for increased consequences.

Big box retailers typically employ asset protection team members who are trained to solely focus on safely eliminating theft. Target & Scheels shared they've hired additional full time and part time staff to combat the theft. Smaller mall inline stores rely on their selling staff of part time employees, store managers and store owners themselves to deter theft, stop the thieves, and call security and/or 911. These team members all put themselves in danger any time they try to stop a thief. Thieves watch store employee coverage and customer traffic to time their theft. When there is a moment the employees are busy with purchasing customers they enter, grab what they want, many times don't conceal the product and walk/run out. They may hit multiple stores before being caught. Mall Security often identifies the

repeat thief in mall common areas, alerts stores, call PD and follow the individuals until PD can apprehend.

One recent incident I can share is a store manager at Kirkwood has been threatened, lunged at and most recently shoved by a thief she tried to verbally stop. She now keeps pepper spray and tazer by her register.

Mall security spends increasingly more time daily supporting the stores who experience theft, aggression and if possible, they keep the thief on property until police arrive to apprehend them. Our Security then "trespasses" the individual to deter their return and when they do return, it allows police to arrest the individual the next time they are seen on property.

Retailers across the nation are experiencing and increase in organized retail theft and North Dakota is no different. Target, Scheels, Wal-Mart and a majority of stores inside our shopping malls are seeing record theft. Target Bismarck has lost more in one year to theft than several stores achieve in one year's gross sales. Thieves Repeat Theft, they have NO FEAR of today's consequences and will continue until new firm action is implemented and enforced. Let's end repeat theft, let business employees feel safe again and stop letting repeat thieves off easy. **Kirkwood Mall and Dakota Square Mall urge a "DO PASS" recommendation on SB 2166**

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2166
1/19/2021
AM

A BILL for an Act to amend and reenact sections 12.1 23 05 and 12.1 23 10 of the North Dakota Century Code, relating to theft offenses; and to provide a penalty.
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Chairwoman Larson [10:50] called the hearing to order
Senators present – Larson, Dwyer, Bakke, Fors, Heitkamp, Luick, Myrdal

Discussion Topics:

- Fourth offense amendment

Continue discussion on Senator Luick's tabled motion from 1/18/2021

Senator Luick Moved amendment 21.0733.01001
Senator Myrdal Seconded the Motion
Vote Passed 7-0-0

Senators	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Senator Luick [10:55] moved DO PASS as Amended
Senator Myrdal second
Motion passed 7-0-0
Senator Dwyer carries.

Senators	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Chairwoman Larson closed the hearing at 10:56.

Jamal Omar, Committee Clerk

January 19, 2021

5
1/19
1041

PROPOSED AMENDMENTS TO SENATE BILL NO. 2166

Page 1, line 2, remove "and"

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

Page 3, line 3, replace the first underscored comma with "or"

Page 3, line 3, remove ", or fourth"

Page 3, line 4, replace "fifth" with "fourth"

Page 7, after line 17, insert:

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

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2166: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2166 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "and"

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2021 HOUSE JUDICIARY

SB 2166

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

SB 2166

3/10/2021

Relating to theft offenses; to provide a penalty; and to declare an emergency

Chairman Klemin called the hearing to order at 10:00 AM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, and Vetter. Absent: Satrom

Discussion Topics:

- Unintended consequences
- Repeat offenders
- Excessive losses
- Violent offenders

Senator Vedaa: Introduced the bill. 10:02

Wayne Stenehjelm, Attorney General of ND: 10:12

Jeff Hintz, Kirkwood Ace Hardware: 10:30

Tyler Halm, Vice President, Scheels, Bismarck, ND: Testimony # 8431 10:45

Eric Goerdt, Executive Team Leader of Asset Protection: Verbal testimony 11:05

Mike Rud, ND Retail Association - ND Petroleum Marketers Association. Testimony #8587 11:15

Amanda Remyse, GNDC : Verbal testimony 11:23

Pat Bohn, Director of Patrol and Probation: Testimony #8497 11:23

Todd Ewell, ND Council for Indigents: Testimony #8468

Jackson Lofgren: Suhr & Lofgren PLLC. Verbal testimony

Chairman Klemin closed the hearing at 11:45

DeLores Shimek
Committee Clerk

Testimony – SB 2166

March 10th, 2021 – House Judiciary Committee

Chairman Klemin and Members of the House Judiciary Committee:

For the record, I am Jennifer Wilson, General Manager of Kirkwood Mall in Bismarck. I am here to represent over 160 retail store fronts at both Kirkwood Mall and Dakota Square Mall in Minot of which 60% are national or regional tenants and 40% ND owned businesses. Our store owners, managers, loss prevention teams and security teams do all they can every day to protect their employee's safety and product from the overwhelming number of repeat thieves. Our Malls and Retailers urge a **"DO PASS Recommendation of SB 2166"**.

Employee, management and customer safety, retention of product and consequences to stop repeat theft by repeat offenders in North Dakota retail establishments is the most important focus. Retail theft has been increasing for several years, but the accelerated increase in repeat theft with threat of violence and violence in most recent years is cause for increased consequences.

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Kirkwood Mall and Dakota Square Mall urge a “DO PASS” recommendation on SB 2166



ND Petroleum Marketers Association
ND Retail Association



The D&D Daily – retail's leading digital news source for Loss Prevention, Asset Protection and Cyber Security - January 19, 2021

Despite COVID shutdowns, violent fatalities in retail reached an all-time high in 2020. Based on publicly reported data, the new report shows fatalities and violent incidents in retail were up roughly 40% since 2016.

256 customers, 123 employees, 16 security officers and 128 suspects died in stores or parking lots nationwide

The Retail Violent Fatalities Report outlines a five-year trend of violence in the retail industry and reveals the stunning reality that COVID-19 shutdowns have had virtually no impact on bringing down violence. In fact, violent trends have continued unabated since 2016.

With the customary retail sectors that typically experience violent criminal acts for the most part unaffected by the shutdowns, there was no break in violent activity for retail. In 2020, a record 70% of violent retail fatalities occurred during the commission of a crime (robberies, burglaries, thefts).

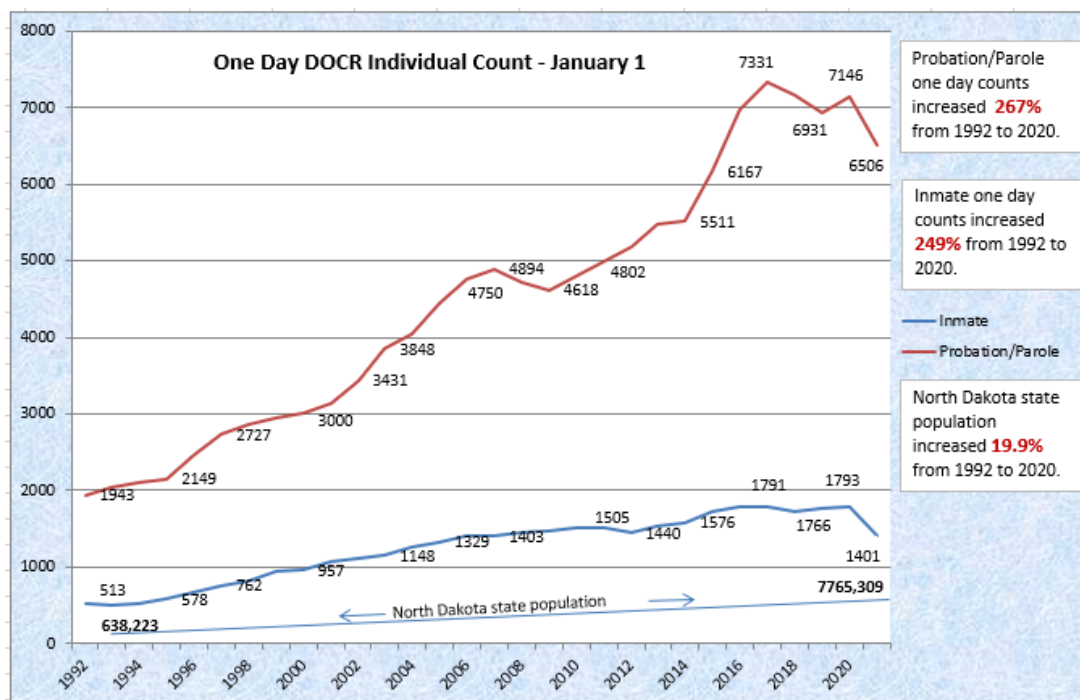
“One alarming trend was the gradual movement of fatalities occurring in the parking lots and off-premises to occurring more now in-store, virtually even with parking lots,” said Downing, a 40+ year veteran of the retail loss prevention industry. “This has resulted in more aggressive consumers, which has been increasingly reported over the last two years.”

**HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE LAWRENCE KLEMIN, CHAIRMAN
MARCH 10, 2021**

**PATRICK N. BOHN, DIRECTOR FOR NORTH DAKOTA PAROLE & PROBATION,
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY RE: SB 2166**

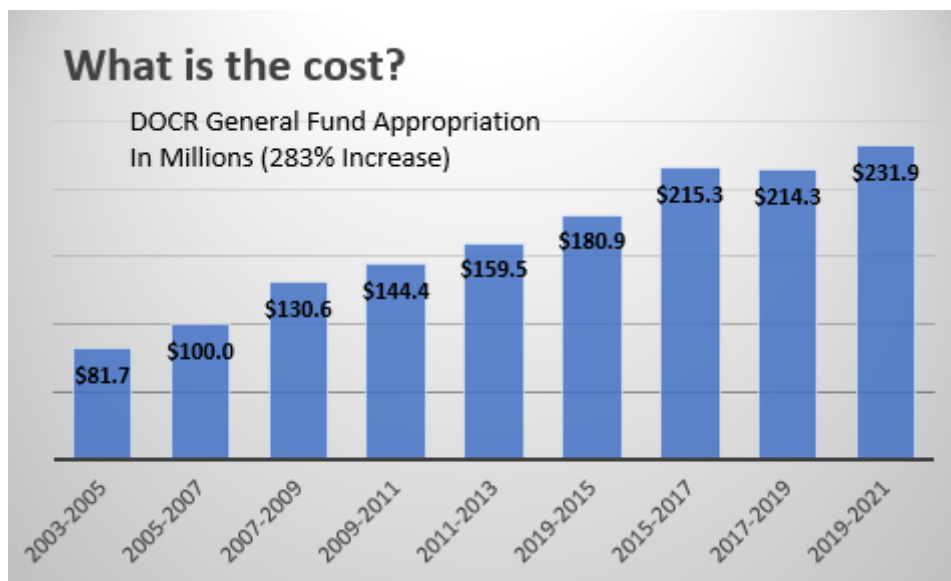
My name is Pat Bohn and I am the Director for North Dakota Parole and Probation, a division of North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify neutral on behalf of the department on SB 2166.

We can understand the frustration that retailers feel when dealing with habitual thieves and the reported growing costs of retail theft along with the brazen attitudes of some people that can pose a real danger to employees. This impacts not only the



retailers, but it also as stated impacts the price you and I pay for goods and our family and friends that work the retail industry.

The retailers have accumulated a lot data on retail theft; however, we continue to rely on solutions that we know and that is we go to the overused criminal statutes looking to increase penalties for the issue at hand with no evidence that the proposed solution will work. Furthermore, as criminal penalties are added or enhanced there are no efforts or requirements to revisit the changes to determine if the data is showing a reduction in the behavior we are looking to curb. Bottom line, these policies typically are not benchmarked with data, impacts measured and reviewed for possible changes. The department has generally sought to educate policymakers on criminal penalty expansion or enhancements. It is these types of enhancements that can incrementally contribute the growth of incarceration, supervision, and correctional costs that are also paid for by you and I.



These incremental actions contribute to the growth in not only corrections but our broader criminal justice system. It also has life-long implications to those convicted of a Felony. According to the data of the [National Inventory of Collateral Consequences of Conviction](#), North Dakota has 542 collateral consequences to a conviction compiled in century and administrative code.

According to a recent article written in the Loss Prevention Magazine¹ there is very limited research on the science of what works in loss prevention. I think it would be a novel approach for the legislature to harness the knowledge of our research universities in the valley and work with the retailers to design a study to grow the science and knowledge behind loss prevention and bring forward evidence-based solutions to the legislature.

If you choose to enact the proposed graduated penalty enhancement policy, we encourage that you consider the following:

- Establish performance measures that could be revisited by future legislatures.
- Require the court to provide written notice in the criminal judgment to the defendant information about enhancements for future charges.
- Establish a safety net so you don't end up catching smaller players when you are trying to address the habitual for-profit bigger players. For instance, in addition to the time requirement, maybe the enhancement doesn't kick in unless the sum value of the previously shoplifted items exceeds \$500 to trigger the A Misdemeanor and the same could apply to establish a sum of \$1000 or greater to trigger the C Felony.

I want to be clear that by no means are we condoning these types of behaviors or at all minimizing what has been testified to by those people on the front lines of the

¹ <https://losspreventionmedia.com/we-all-know-or-do-we-improving-the-science-of-evidence-based-lp/>

retail industry. In closing, we respect your decision and will execute our responsibilities accordingly. If you have any questions, I'd be glad to try and answer them.

Engrossed Senate Bill 2166
Senate Judiciary Committee
March 10, 2021
Neutral Testimony of Todd N. Ewell
Deputy Director, NDCLCI

Chairman Klemin, members of the House Judiciary Committee, my name is Todd Ewell and I am the deputy director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense services in North Dakota. On behalf of the Commission on Legal Counsel, I rise today to provide neutral testimony on Engrossed Senate Bill 2166.

The Commission expressed concerns when discussing this bill after the passage through the Senate. The first issue of concern is the potential costs to defend additional felony cases. We have not seen any data suggesting how big of an issue this may ultimately present, but felony cases clearly cost more money to the taxpayer. According to an article in the Minot Daily News written in 2019, citing a North Dakota Department of Corrections and Rehabilitation spokesperson, the cost of incarceration is approximately \$43,000 per year. Sentencing an individual for to up to five years in prison for repeatedly taking items of less than \$500 will be costly.

Several presenters to the Senate Judiciary Committee set forth examples of a more violent trend in retail theft. As the former Supervising Attorney of the Bismarck Mandan Public Defender Office, I would point out that our existing laws can address these issues.

Examples posed to the Senate Judiciary Committee depicted thieves violently running out of a store, running into people, or threatening store clerks. Those actions are no longer the crime of theft – these are examples of Robbery.

Under NDCC 12.1-22-01, A person is guilty of robbery if, in the course of committing a theft, he inflicts or attempts to inflict bodily injury upon another or threatens or menaces another with imminent bodily injury.

Please note that no dollar amount is needed.

Another point discussed in front of the Senate Judiciary Committee is the concept that individuals are aware of the threshold amount required to trigger a felony arrest. State's

Attorneys do have the ability to consolidate theft offenses over a period of time and charge the aggregate dollar amount.

NDCC 12.1-23-04 paragraph 7 states:

...Thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be charged as one offense and the amounts proved to have been stolen may be aggregated in determining the grade of the offense.

The Commission brings this neutral testimony to raise these concerns.

Respectfully Submitted:

A handwritten signature in black ink, appearing to be 'TE' with a stylized flourish.

Todd N. Ewell

Deputy Director, NDCLCI

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

SB 2166
3/10/2021

Relating to theft offenses; to provide a penalty; and to declare an emergency

Chairman Klemin called the meeting to order at 3:08 PM

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, and Vetter. Absent: Satrom

Discussion Topics:

- Violent incidents
- Amendments

Subcommittee appointed: Chair. Rep. Hanson, Rep. Vetter, Rep. Becker

Closed 3:18

DeLores D. Shimek
Committee Clerk

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

SB 2166
3/15/2021

Subcommittee

Relating to theft offenses; to provide a penalty; and to declare an emergency.
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Rep. Hanson, Chairman called the subcommittee meeting to order at 11:30 AM.

Present: Rep. K. Hanson, Rep. Vetter and Rep. Becker

Discussion Topics:

- Amendment

Rep. Hanson went over the proposed amendment. Testimony # 9200, #9201

Rep. Vetter: Moved to adopt the proposed amendment 21.0733.02002

Rep. Becker: Seconded

Voice vote carried

Rep. Becker: Do Pass as Amended

Rep. Vetter: Seconded

Roll Call Vote:

Representatives	Vote
Chairman Rep. Hanson	Y
Rep. Vetter	Y
Rep Becker	Y

Motion carried 3 yes 0 no 0 absent

Stopped 11:44

DeLores D. Shimek
Committee Clerk

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2166

Page 3, line 3, replace "third" with "subsequent"

Page 3, line 4, remove "A fourth or subsequent violation under"

Page 3, replace line 5 with:

- "d. A sentence imposed under this subsection must be accompanied by a written statement by the court providing notice of any offense under this section which provides an enhanced penalty, including the penalty for a subsequent offense."

Renumber accordingly

21.0733.02002
Title.

Prepared by the Legislative Council staff for
Representative Hanson
March 12, 2021

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2166

Page 3, line 3, replace "third" with "subsequent"

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Page 3, replace line 5 with:

- "d. A sentence imposed under this subsection must be accompanied by a written statement by the court providing notice of any offense under this section which provides an enhanced penalty, including the penalty for a subsequent offense."

Renumber accordingly

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2166

Introduced by

Senators Vedaa, Hogue, O. Larsen, Larson

Representatives D. Anderson, Thomas

1 A BILL for an Act to amend and reenact sections 12.1-23-05 and 12.1-23-10 of the North
2 Dakota Century Code, relating to theft offenses; to provide a penalty; and to declare an
3 emergency.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 12.1-23-05 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **12.1-23-05. Grading of theft offenses.**

- 8 1. Notwithstanding subsection 3, theft under this chapter is a class A felony if the
9 property or services stolen exceed fifty thousand dollars in value.
- 10 2. Notwithstanding the provisions of subsection 3, theft under this chapter is a class B
11 felony if the property or services stolen exceed ten thousand dollars in value but do
12 not exceed fifty thousand dollars or are acquired or retained by a threat to commit a
13 felony.
- 14 3. Theft under this chapter is a class C felony if:
- 15 a. The property or services stolen exceed one thousand dollars in value;
- 16 b. The property or services stolen are acquired or retained by threat and (1) are
17 acquired or retained by a public servant by a threat to take or withhold official
18 action, or (2) exceed one hundred dollars in value;
- 19 c. The property or services stolen exceed one hundred dollars in value and are
20 acquired or retained by a public servant in the course of official duties;
- 21 d. The property stolen is a firearm, ammunition, or an explosive or destructive
22 device;
- 23 e. The property consists of any government file, record, document, or other
24 government paper stolen from any government office or from any public servant;

- 1 f. The defendant is in the business of buying or selling stolen property and the
2 defendant receives, retains, or disposes of the property in the course of that
3 business;
- 4 g. The property stolen consists of any implement, paper, or other thing uniquely
5 associated with the preparation of any money, stamp, bond, or other document,
6 instrument, or obligation of this state;
- 7 h. The property stolen consists of livestock taken from the premises of the owner;
- 8 i. The property stolen consists of a key or other implement uniquely suited to
9 provide access to property the theft of which would be a felony and it was stolen
10 to gain such access;
- 11 j. The property stolen is a card, plate, or other credit device existing for the purpose
12 of obtaining money, property, labor, or services on credit, or is a debit card,
13 electronic fund transfer card, code, or other means of access to an account for
14 the purposes of initiating electronic fund transfers; or
- 15 k. The property stolen is a prescription drug as defined in section 43-15.3-01,
16 except when the quantity stolen is five or fewer capsules, pills, or tablets.
- 17 4. All other theft under this chapter is a class A misdemeanor, unless the requirements of
18 subsection 5 are met.
- 19 5. a. Theft under this chapter of property or services of a value not exceeding five
20 hundred dollars is a class B misdemeanor for a first offense if:
- 21 a. (1) The theft was committed by shoplifting; or
22 (2) The following three factors are met:
- 23 (a) The theft was not committed by threat;
- 24 ~~b.~~(b) The theft was not committed by deception by one who stood in a
25 confidential or fiduciary relationship to the victim of the theft; and
- 26 ~~e.~~(c) The defendant was not a public servant or an officer or employee of a
27 financial institution who committed the theft in the course of official
28 duties.
- 29 b. The special classification provided in ~~this subsection~~paragraph 2 of subdivision a
30 applies if the offense is classified under this subsection in the charge or if, at

1 sentencing, the required factors are established by a preponderance of the
2 evidence.

3 c. A second or ~~third~~ subsequent offense under paragraph 1 of subdivision a
4 occurring within three years is a class A misdemeanor. ~~A fourth or subsequent~~
5 ~~violation under paragraph 1 of subdivision a occurring within three years is a~~
6 ~~class C felony.~~

7 d. A sentence imposed under this subsection must be accompanied by a written
8 statement by the court providing notice of any offense under this section which
9 provides an enhanced penalty, including the penalty for a subsequent offense.

10 6. Notwithstanding subsection 3 of section 12.1-06-01, an attempt to commit a theft
11 under this chapter is punishable equally with the completed offense when the actor
12 has completed all of the conduct which the actor believes necessary on the actor's
13 part to complete the theft except receipt of the property.

14 7. For purposes of grading, the amount involved in a theft under this chapter is the
15 highest value by any reasonable standard, regardless of the actor's knowledge of such
16 value, of the property or services which were stolen by the actor, or which the actor
17 believed that the actor was stealing, or which the actor could reasonably have
18 anticipated to have been the property or services involved. Thefts committed pursuant
19 to one scheme or course of conduct, whether from the same person or several
20 persons, may be charged as one offense and the amounts proved to have been stolen
21 may be aggregated in determining the grade of the offense.

22 **SECTION 2. AMENDMENT.** Section 12.1-23-10 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **12.1-23-10. Definitions for theft and related offenses.**

25 In this chapter:

26 1. "Dealer in property" means a person who buys or sells property as a business.

27 2. "Deception" means:

28 a. Creating or reinforcing a false impression as to fact, law, status, value, intention,
29 or other state of mind; or obtaining or attempting to obtain public assistance by
30 concealing a material fact, making a false statement or representation,
31 impersonating another, concealing the transfer of property without adequate

1 consideration, or using any other fraudulent method; but deception as to a
2 person's intention to perform a promise may not be inferred from the fact alone
3 that the person did not substantially perform the promise unless it is part of a
4 continuing scheme to defraud;

5 b. Preventing another from acquiring information which would affect his judgment of
6 a transaction;

7 c. Failing to correct a false impression which the actor previously created or
8 reinforced, or which he knows to be influencing another to whom he stands in a
9 fiduciary or confidential relationship;

10 d. Failing to correct an impression which the actor previously created or reinforced
11 and which the actor knows to have become false due to subsequent events;

12 e. Failing to disclose a lien, adverse claim, or other impediment to the enjoyment of
13 property which he transfers or encumbers in consideration for the property
14 obtained or in order to continue to deprive another of his property, whether such
15 impediment is or is not valid, or is or is not a matter of official record;

16 f. Using a credit card, charge plate, or any other instrument which purports to
17 evidence an undertaking to pay for property or services delivered or rendered to
18 or upon the order of a designated person or bearer (1) where such instrument
19 has been stolen, forged, revoked, or canceled, or where for any other reason its
20 use by the actor is unauthorized, and (2) where the actor does not have the
21 intention and ability to meet all obligations to the issuer arising out of his use of
22 the instrument; or

23 g. Any other scheme to defraud. The term "deception" does not, however, include
24 falsifications as to matters having no pecuniary significance, or puffing by
25 statements unlikely to deceive ordinary persons in the group addressed. "Puffing"
26 means an exaggerated commendation of wares in communications addressed to
27 the public or to a class or group.

28 3. "Deprive" means:

29 a. To withhold property or to cause it to be withheld either permanently or under
30 such circumstances that a major portion of its economic value, or its use and
31 benefit, has, in fact, been appropriated;

- 1 b. To withhold property or to cause it to be withheld with the intent to restore it only
2 upon the payment of a reward or other compensation; or
- 3 c. To dispose of property or use it or transfer any interest in it under circumstances
4 that make its restoration, in fact, unlikely.
- 5 4. "Fiduciary" means a trustee, guardian, executor, administrator, receiver, or any other
6 person acting in a fiduciary capacity, or any person carrying on fiduciary functions on
7 behalf of a corporation, limited liability company, or other organization which is a
8 fiduciary.
- 9 5. "Financial institution" means a bank, insurance company, credit union, safety deposit
10 company, savings and loan association, investment trust, or other organization held
11 out to the public as a place of deposit of funds or medium of savings or collective
12 investment.
- 13 6. "Obtain" means:
- 14 a. In relation to property, to bring about a transfer or purported transfer of an interest
15 in the property, whether to the actor or another.
- 16 b. In relation to services, to secure performance thereof.
- 17 7. "Property" means any money, tangible or intangible personal property, property
18 (whether real or personal) the location of which can be changed (including things
19 growing on, affixed to, or found in land and documents although the rights represented
20 thereby have no physical location), contract right, chose-in-action, interest in or claim
21 to wealth, credit, or any other article or thing of value of any kind. "Property" also
22 means real property the location of which cannot be moved if the offense involves
23 transfer or attempted transfer of an interest in the property.
- 24 8. "Property of another" means property in which a person other than the actor or in
25 which a government has an interest which the actor is not privileged to infringe without
26 consent, regardless of the fact that the actor also has an interest in the property and
27 regardless of the fact that the other person or government might be precluded from
28 civil recovery because the property was used in an unlawful transaction or was subject
29 to forfeiture as contraband. Property in possession of the actor shall not be deemed
30 property of another who has a security interest therein, even if legal title is in the
31 creditor pursuant to a conditional sales contract or other security agreement. "Owner"

1 means any person or a government with an interest in property such that it is "property
2 of another" as far as the actor is concerned.

3 9. "Receiving" means acquiring possession, control, or title, or lending on the security of
4 the property.

5 10. "Services" means labor, professional service, transportation, telephone, mail or other
6 public service, gas, electricity and other public utility services, accommodations in
7 hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or
8 other property.

9 11. "Shoplifting" means to willfully take possession of any merchandise owned, held,
10 offered, or displayed for sale, by a merchant, store, or other mercantile establishment,
11 with the intent to deprive the owner of the merchandise. The term includes:

12 a. Removing merchandise from a store or other mercantile establishment without
13 paying for the merchandise;

14 b. Concealing a nonpurchased good or merchandise;

15 c. Altering, transferring, or removing a price marking on a good or merchandise;

16 d. Transferring a good from one container to another; and

17 e. Causing the amount paid for a good or merchandise to be less than the stated
18 retail price.

19 12. "Stolen" means property which has been the subject of theft or robbery or a vehicle
20 which is received from a person who is then in violation of section 12.1-23-06.

21 ~~42:13.~~ "Threat" means an expressed purpose, however communicated, to:

22 a. Cause bodily injury in the future to the person threatened or to any other person;

23 b. Cause damage to property;

24 c. Subject the person threatened or any other person to physical confinement or
25 restraint;

26 d. Engage in other conduct constituting a crime;

27 e. Accuse anyone of a crime;

28 f. Expose a secret or publicize an asserted fact, whether true or false, tending to
29 subject a person living or deceased, to hatred, contempt, or ridicule or to impair
30 another's credit or business repute;

31 g. Reveal any information sought to be concealed by the person threatened;

- 1 h. Testify or provide information or withhold testimony or information with respect to
- 2 another's legal claim or defense;
- 3 i. Take or withhold official action as a public servant, or cause a public servant to
- 4 take or withhold official action;
- 5 j. Bring about or continue a strike, boycott, or other similar collective action to
- 6 obtain property or deprive another of his property which is not demanded or
- 7 received for the benefit of the group which the actor purports to represent;
- 8 k. Cause anyone to be dismissed from his employment, unless the property is
- 9 demanded or obtained for lawful union purposes; or
- 10 l. Do any other act which would not in itself substantially benefit the actor or a
- 11 group he represents but which is calculated to harm another person in a
- 12 substantial manner with respect to his health, safety, business, employment,
- 13 calling, career, financial condition, reputation, or personal relationship.

14 Upon a charge of theft, the receipt of property in consideration for taking or withholding
15 official action shall be deemed to be theft by threat regardless of whether the owner
16 voluntarily parted with his property or himself initiated the scheme.

17 ~~43.14.~~ "Traffic" means:

- 18 a. To sell, transfer, distribute, dispense, or otherwise dispose of to another person;
- 19 or
- 20 b. To buy, receive, possess, or obtain control of, with intent to sell, transfer,
- 21 distribute, dispense, or otherwise dispose of to another person.

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

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

SB 2166

3/15/2021

Relating to theft offenses; to provide a penalty; and to declare an emergency.
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Chairman Klemin called the meeting to order at 2:37 PM

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Satrom, and Vetter. Absent: Roers Jones

Discussion Topics:

- Amendment
- Subcommittee report
- Penalty guidelines

Rep. K. Hanson: Reported on subcommittee meeting. Testimony #9200, #9201

Rep. K. Hanson: Motion to adopt the amendment 21.0733.02002

Rep. Vetter: Seconded

Roll call vote:

Representatives	Vote
Representative Lawrence R. Klemin	N
Representative Karen Karls	N
Representative Rick Becker	Y
Representative Ruth Buffalo	N
Representative Cole Christensen	N
Representative Claire Cory	N
Representative Karla Rose Hanson	Y
Representative Terry B. Jones	N
Representative Jeffery J. Magrum	N
Representative Bob Paulson	Y
Representative Gary Paur	N
Representative Shannon Roers Jones	A
Representative Bernie Satrom	N
Representative Steve Vetter	Y

4-9-1 Motion Failed

Rep. Becker: Moved to increase the penalties from C to B
No second

Rep. Satrom: Moved to adopt the amendment 21.0733.02003

Rep. Paur: Seconded

Roll Call Vote:

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	N
Rep. Christensen	Y
Rep. Cory	Y
Rep T. Jones	Y
Rep Magrum	Y
Rep Paulson	Y
Rep Paur	Y
Rep Roers Jones	A
Rep B. Satrom	Y
Rep Vetter	N
Rep Buffalo	Y
Rep K. Hanson	Y

11-2-1 Motion Passed

Rep. Christensen: Do Pass as Amended

Rep. Satrom: Seconded

Roll Call Vote:

Representatives	Attendance
Representative Lawrence R. Klemin	X
Representative Karen Karls	X
Representative Rick Becker	X
Representative Ruth Buffalo	X
Representative Cole Christensen	X
Representative Claire Cory	X
Representative Karla Rose Hanson	X
Representative Terry B. Jones	X
Representative Jeffery J. Magrum	X
Representative Bob Paulson	X
Representative Gary Paur	X
Representative Shannon Roers Jones	X
Representative Bernie Satrom	X
Representative Steve Vetter	X

10-3-1 Motion carried

Carrier: Rep. T. Jones

Stopped 3:17

DeLores D. Shimek, Committee Clerk

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2166

Page 3, line 3, replace "third" with "subsequent"

Page 3, line 4, remove "A fourth or subsequent violation under"

Page 3, replace line 5 with:

- "d. A sentence imposed under this subsection must be accompanied by a written statement by the court providing notice of any offense under this section which provides an enhanced penalty, including the penalty for a subsequent offense."

Renumber accordingly

March 15, 2021

DE 3/15/2

10f1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2166

Page 3, line 5 replace "three" with "four"

Page 3, after line 5 insert:

- "d. A sentence imposed under this subsection must be accompanied by a written statement by the court providing notice of any offense under this section which provides an enhanced penalty, including the penalty for a subsequent offense."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2166, as engrossed: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2166 was placed on the Sixth order on the calendar.

Page 3, line 5 replace "three" with "four"

Page 3, after line 5 insert:

- "d. A sentence imposed under this subsection must be accompanied by a written statement by the court providing notice of any offense under this section which provides an enhanced penalty, including the penalty for a subsequent offense."

Renumber accordingly

21.0733.02002
Title.

Prepared by the Legislative Council staff for
Representative Hanson
March 12, 2021

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Sixty-seventh
Legislative Assembly
of North Dakota

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Senators Vedaa, Hogue, O. Larsen, Larson

Representatives D. Anderson, Thomas

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11 felony if the property or services stolen exceed ten thousand dollars in value but do
12 not exceed fifty thousand dollars or are acquired or retained by a threat to commit a
13 felony.
- 14 3. Theft under this chapter is a class C felony if:
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20 acquired or retained by a public servant in the course of official duties;
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- 15 k. The property stolen is a prescription drug as defined in section 43-15.3-01,
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- 26 ~~e-~~(c) The defendant was not a public servant or an officer or employee of a
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28 duties.
- 29 b. The special classification provided in ~~this subsection~~ paragraph 2 of subdivision a
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1 sentencing, the required factors are established by a preponderance of the
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31 benefit, has, in fact, been appropriated;

- 1 b. To withhold property or to cause it to be withheld with the intent to restore it only
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- 10 l. Do any other act which would not in itself substantially benefit the actor or a
- 11 group he represents but which is calculated to harm another person in a
- 12 substantial manner with respect to his health, safety, business, employment,
- 13 calling, career, financial condition, reputation, or personal relationship.

14 Upon a charge of theft, the receipt of property in consideration for taking or withholding
15 official action shall be deemed to be theft by threat regardless of whether the owner
16 voluntarily parted with his property or himself initiated the scheme.

17 ~~43.14.~~ "Traffic" means:

- 18 a. To sell, transfer, distribute, dispense, or otherwise dispose of to another person;
- 19 or
- 20 b. To buy, receive, possess, or obtain control of, with intent to sell, transfer,
- 21 distribute, dispense, or otherwise dispose of to another person.

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