

2011 HOUSE JUDICIARY

HB 1329

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1329
January 25, 2011
13328

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1329.

Aaron Birst, Association of Counties: We asked for this bill and we thank Rep. Dahl helping us out on this. This comes from some of our states' attorney members and we support the bill. I don't have prepared remarks, but I will provide some prepared remarks if you feel that necessary. HB 1329 does basically one thing. It clarifies the statute of limitations for possession of stolen property. When this was first brought to my attention two sessions ago, from Dennis Johnson, a state's attorney in McKenzie County; he indicated that he had had a case where someone stole a Bobcat skid loader and possessed it for over 5 years. It took 5 years for law enforcement to actually find the person who took it, he charged the person with possession of stolen property. He thought that would still be chargeable. It went to the district court and the district court cited State v. Harsch which is a ND Supreme Court case and the case number is 445 NW 2nd 626, 1989 case. The crux of that case, the Supreme Court said, for possession of stolen property, at the time you steal the property is the start of the countdown for the statute of limitations and you do not count the time that you actually possessed it. In other words, it gave an incentive, if you can steal something and hide it long enough, for a case of a felony, three years, in case of a misdemeanor, 2 years, you would not be able to charge somebody for knowingly possessing stolen property. Obviously, Dennis Johnson was quite shocked when he called me last session and told me about this. I frankly thought the district court just got it wrong and told him that I wasn't aware of that. He cited me the case law and after reading it, I realized that it was true. In the case, is it a crime of withholding or retaining property, is not a continuing offense for which the statute of limitations does not begin to run until completion of the last act. In other words, the last act doesn't enter into the analysis. This bill will fix that. Section 1 clarifies for the felonies that you have three years after the time that law enforcement becomes aware of it and then for misdemeanors you have two years again after the time that law enforcement becomes aware of it. We did run this past the Attorney General's office. Originally we had it drafted that just says that after the time of discovery, the AG said that there should probably still be some limitation period and that's why it contains the three years after the fact.

Rep. Klemin: In both sections here, it talks about being discovered in the defendant's possession. I was wondering why it should be in the defendant's possession. Is that necessary, what if you discover it and you are able to track it to the defendant, but he didn't have it in his possession.

Aaron Birst: Very good question, quite frankly we just thought that was the easiest language to explain to the committee; if you had other suggestions, I would be all right with that, because you could argue that because it's in my neighbor's barn and I put it there, but it wasn't in my possession, and then it doesn't apply. If you think there is better language to address that that would be great.

Rep. Klemin: I'm not sure if it should be in there at all. Was there some reason for saying that it had to be in the defendant's possession? What if he buried it out in somebody's backyard?

Aaron Birst: There's no love for that particular language.

Chairman DeKrey: So if you ended the sentence right after authorities, the bill would keep its integrity.

Aaron Birst: I believe that would be correct. Again, the intent is to say that if somebody has knowingly, and that's not in this bill because that's the theft property, theft of property requires that you knowingly, take, possess or retain stolen property. So there is still that knowing element, but there is not necessarily an actual physical possession element, I think that would clarify that.

Rep. Boehning: What's the dollar amount that would constitute a felony?

Aaron Birst: \$500.00.

Rep. Boehning: If I go to a pawn shop and buy some tools that are over \$500, and I buy them legally, but they are found to be stolen, am I in trouble, the pawn shop in trouble, or who's in trouble.

Aaron Birst: I should have clarified that. The statute still requires you to know that it's stolen property. If you went to that pawn shop, you buy the goods, they turn out to be stolen, the State would have to prove, if they want to charge you, beyond a reasonable doubt; that you knew they were stolen and you possessed them. In the case of the pawn shop example, it would be extremely hard to indicate, unless we had someone come in and say, yeah Rep. Boehning knew they were stolen and he was just using this as a cash-washing operation or something like that. It would almost be impossible for that innocent buying to be prosecuted.

Rep. Boehning: One of my friends was in a pawn shop one day and he happened to call me up a couple of days later, there was a finish nailer in there, and had the last

name of Boehing on there. It wasn't mine but it was my uncle's property. By the time I called my uncle and went back to the pawn shop, the property was gone. Is there any recourse for that situation?

Aaron Birst: Again, for the person who purchased it from the pawn shop, I would think that there was no criminal action; there might be a civil action to recover that. In that case, if the pawn shop knowingly is buying stolen property, they could be charged with a crime for that. Again, you would have to prove that they knew it was stolen. If somebody brought in a gun with a sign that said "this is a stolen gun" and they go ahead and sell it, you could charge the pawn shop.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

Rep. Klemin: I move to amend HB 1329 by removing the language on lines 10 and 18, where it says "in the defendant's possession."

Rep. Steiner: Seconded the motion.

Chairman DeKrey: We will take a voice vote. Motion carried. We now have the bill before us as amended. What are the committee's wishes?

Rep. Maragos: I move a Do Pass as amended.

Rep. Hogan: Second the motion.

11 YES 0 NO 3 ABSENT DO PASS AS AMENDED

CARRIER: Rep. Guggisberg

January 25, 2011

YR
1/25/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1329

Page 1, line 10, remove "in the defendant's possession"

Page 1, line 18, remove "in the defendant's possession"

Renumber accordingly

Date: 1/25/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1329

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. Maragos Seconded By Rep. Hogan

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 0

Absent 3

Floor Assignment Rep. Guggisberg

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

REPORT OF STANDING COMMITTEE

HB 1329: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1329 was placed on the Sixth order on the calendar.

Page 1, line 10, remove "in the defendant's possession"

Page 1, line 18, remove "in the defendant's possession"

Renumber accordingly

2011 SENATE JUDICIARY

HB 1329

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1329
3/21/11
Job #15781

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to statute of limitations in possession of stolen property

Minutes:

There is attached testimony

Senator Nething – Chairman

Aaron Birst – Legal Counsel for ND Association of Counties – See written testimony.

Senator Nething – Said it looks like he is trying to expand what the bill was intended to cover. Initially it was stolen property and now it is into stolen services.

Senator Olafson – Asks for an example of theft of services.

Birst – Replies taking of cable services. He says this is not an intent to get everyone who has possessed the property, just the person who stole it.

Opposition – 0

Neutral -0

Close the hearing on 1329

Committee work

Senator Nething asks Mr. Birst to bring in something in to clarify the bill.

Birst – Relays what services were stolen.

Committee will act on when they get the amendment.


2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1329
3/21/11
Job #15842

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to statute of limitations in possession of stolen property.

Minutes:

Senator Nething – Chairman

Committee work
Committee discusses there is an amendment

Senator Olafson moves to adopt the amendment

Senator Sitte seconded

Verbal vote – all yes

Senator Olafson moves a do pass as amended

Senator Sorvaag seconded

Roll call vote – 6 yes, 0 no

Senator Lyson will carry

①

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1329

Page 1, line 2, after "stolen property" insert "or services"

Page 1, line 8, replace ", or for the crime of possession of stolen property, within three years after the property has been discovered by law enforcement authorities" with ". Prosecution of felony offenses set out in chapter 12.1-23 must be commenced within the later of three years of commission of the last act that is an element of the offense, three years of discovery of the stolen property, or three years of discovery of the loss of the property or services."

Page 1, line 16, replace ", or for the crime of possession of stolen property, within two years after the property has been discovered by law enforcement authorities" with ". Prosecution of a misdemeanor offenses set out in chapter 12.1-23 must be commenced within the later of two years of commission of the last act that is an element of the offense, two years of discovery of the stolen property, or two years of discovery of the loss of the property or services."

Renumber accordingly

Date: 3/22/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1329

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 Senator Olafson Seconded By Senator Sitte

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

Total (Yes) _____ No _____

Absent _____

Floor Assignment Senator

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

Verbal - yes

Date: 3/22/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1329

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 Senator Olafson Seconded By Senator Sorvaag

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	<input checked="" type="checkbox"/>		Carolyn Nelson	<input checked="" type="checkbox"/>	
Curtis Olafson - V. Chairman	<input checked="" type="checkbox"/>				
Stanley Lyson	<input checked="" type="checkbox"/>				
Margaret Sitte	<input checked="" type="checkbox"/>				
Ronald Sorvaag	<input checked="" type="checkbox"/>				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Senator Lyson

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

REPORT OF STANDING COMMITTEE

HB 1329, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1329 was placed on the Sixth order on the calendar.

Page 1, line 2, after "property" insert "or services"

Page 1, line 8, remove ", or for the crime of possession of stolen"

Page 1, remove line 9

Page 1, line 10, remove "authorities"

Page 1, line 10, after the period insert "Prosecution of felony offenses under chapter 12.1-23 must be commenced within the later of three years of commission of the last act that is an element of the offense, three years of discovery of the stolen property, or three years of discovery of the loss of the property or services."

Page 1, line 16, remove ", or for the crime of possession of stolen"

Page 1, remove line 17

Page 1, line 18, remove "authorities"

Page 1, line 18, after the period insert "Prosecution of misdemeanor offenses under chapter 12.1-23 must be commenced within the later of two years of commission of the last act that is an element of the offense, two years of discovery of the stolen property, or two years of discovery of the loss of the property or services."

Renumber accordingly

2011 TESTIMONY

HB 1329

Testimony to the
SENATE JUDICIARY

Prepared March 21, 2011 by the North Dakota Association of Counties
Aaron Birst, Legal Counsel

CONCERNING HOUSE BILL 1329

Chairman Nething and members of the committee, the North Dakota Association of Counties is here today to support HB 1329 which is an attempt to clarify the criminal statute of limitations on possession of stolen property.

In most criminal cases in North Dakota, there is a statute of limitations of three years for felonies and two years for misdemeanors. What that means is if you commit a felony the prosecutor has three years in which to prosecute you. If they do not do so, for whatever reason, they are barred from ever prosecuting you. Usually, those statutes of limitations do not cause unjust results since when a crime occurs there is a definitive date by which law enforcement and prosecutors understand the crime needs to be prosecuted by.

The crime of possession of stolen property is one exception to this rule. Normally, you would think if you steal property and continue to possess that property the crime is ongoing so you could be prosecuted as long as you are **knowingly** still possessing stolen property. However, in 1989, the North Dakota Supreme Court in a case called State v. Hersch, 445 N.W.2d 626, indicated the crime of retaining stolen property is not a continuing offense for which the statute of limitations stops. In other words, the statute of limitations begins ticking when you first receive the stolen property NOT when you are found with the stolen property.

The message this sends is if you steal don't get caught for either two or three years and you are in the clear since you cannot be prosecuted. This is an unacceptable result.

What this bill does is to clarify that if you **knowingly** possess stolen property, the statute of limitations does not begin running until law enforcement authorities discover the stolen property. Under this bill, at the point law enforcement discovers the stolen property only then does the statute of limitations begin running which would require the prosecutor to bring a prosecution within either two or three years.

For the following reasons I ask that you support House Bill 1329.

Thank you.