

2011 SENATE JUDICIARY


SB 2251

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2251
1/24/11
Job #13278

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to manufacture, delivery, or possession with intent to manufacture or deliver controlled substances.

Minutes:

There is attached written testimony

Senator Nething – Chairman

Senator Olafson – Vice Chairman – Opens the hearing on 2251

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

Senator Lyson – He asks if bill #2223 would be involved in the same crimes.

Lawyer – Responds yes if 2223 does pass it would likely be included the school zone and they would ask that the possession with intent to deliver and manufacture be added.

No opposition

Close the hearing on 2252.


2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2251
2/9/11
Job #14280

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to manufacture, delivery, or possession with intent to manufacture or deliver controlled substances.

Minutes:

Senator Nething – Chairman

Senator Olafson says there is a conflict in the code relating to enhanced penalties for drug crimes and this bill will resolve the conflict. **Senator Site** questions if this would apply around day care centers.

Senator Olafson motions for a do pass

Senator Lyson seconds

Discussion

Senator Sitte remarks on her concern for locking up so many people.

Senator Lyson said 10 years is the maximum they can get. The judge may give him less.

Senator Sorvaag mentions this is about selling not use.

Roll call vote – 6 – 0

Motion carries

Senator Olafson will carry

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

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1251

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By S. Olafson Seconded By S. Lyson

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

Total (Yes) 6 No 0

Absent _____

Floor Assignment S. Olafson

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

REPORT OF STANDING COMMITTEE

SB 2251: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2251 was placed on the
Eleventh order on the calendar.

2011 HOUSE JUDICIARY

SB 2251

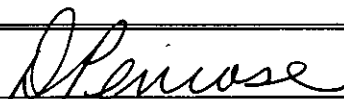
2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2251
March 15, 2011
15432

Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2251.

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

Rep. Boehning: You're talking about all public and private schools; you're talking like Josef's School of Hair Design, would that fall underneath this restriction as well.

Julie Lawyer: I think it goes a little bit further than that. I don't have it in front of me, but I believe it says that elementary, secondary schools, technical and education schools, and in another section, I believe, are colleges. That one, including colleges, would apply to the delivery and manufacture. That's specifically left out of the possession, so yes, it would include Josef's School of Hair Design would be a technical college or a private trade school, it would be included.

Rep. Boehning: There are a couple in my district that are really close to residential areas, a lot of apartments, so it would fall underneath this as well.

Rep. Koppelman: What as a prosecutor do you need to prove possession with intent to deliver. Is it just the quantity that's sufficient to prove that, or do you have to have some evidence that the person was trafficking and that kind of thing.

Julie Lawyer: Sometimes it can be just the amount. The case that I gave with 93 lbs., obviously they're not going to be able to use 93 lbs. of marijuana by themselves, so that alone can give you information as to possession with intent to deliver. Typically we see that they have scales. There are PO sheets; a listing of names and amounts that are owed. We do have other criteria that go with it, besides just the size of the possession of the drug.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition to SB 2251. We will close the hearing. Let's take a look at SB 2251.

Rep. Maragos: I move a Do Pass on SB 2251.

Rep. Delmore: Second the motion.

13 YES 0 NO 1 ABSENT DO PASS CARRIER: Rep. Steiner

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

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2251

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. Delmore

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) 13 No 0

Absent 1

Floor Assignment Rep. Steiner

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

REPORT OF STANDING COMMITTEE

SB 2251: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2251 was placed on the
Fourteenth order on the calendar.

2011 TESTIMONY

SB 2251

Sponsor bullet points for SB 2251

What the law is today:

- Drug crimes that are committed within 1,000 feet of a school are enhanced to the next penalty level (C felony to B felony; B felony to A felony; etc), **except** crimes of Possession with Intent to Deliver or Manufacture.
- Manufacture, Possession with Intent to Deliver or Manufacture, and Possession of marijuana are enhanced to the next penalty level if the amount of marijuana is in excess of 500 grams of marijuana.
- Delivery of marijuana is enhanced to the next penalty level if the amount of marijuana is in excess of 100 pounds (45.36 **kilograms**).

What this bill would do:

- **All** drug crimes committed within 1,000 feet of a school will be enhanced to the next penalty level.
- **All** marijuana crimes have the same threshold amount to enhance the crime to the next penalty level (500 grams or more).

Senate Judiciary Committee
Senate Bill 2251
Testimony of Julie Lawyer, Assistant Attorney General
January 24, 2011

Chair Nething and Members of the Committee:

My name is Julie Lawyer and I am a prosecutor with the Attorney General's Office. Prior to that, I worked for 9 years as a prosecutor with the Burleigh County State's Attorney's office. I am here this morning in support of Senate Bill 2251.

This bill proposes to make two (2) changes to the drug manufacturing and trafficking laws we currently have. The first change is to eliminate the penalty enhancement for the delivery of more than 100 pounds of marijuana. This law currently makes it a class B felony offense to deliver marijuana. However, if the delivery is for more than 100 pounds or 45.36 kilograms of marijuana, then the penalty is enhanced to a class A felony offense. The reason we are proposing this change is that this statute is in conflict with another enhancement statute.

Under this other statute, there are aggravating factors that enhance the penalty for certain drug crimes. For marijuana, the penalty is enhanced to the next level if the crime involves 500 grams or more of marijuana. With the laws we have in place now, a delivery of marijuana can only be enhanced if it involves over 100 pounds or 45,360 grams of marijuana. All other marijuana crimes are enhanced to the next penalty level if they involve over 500 grams of marijuana.

There is currently a case on appeal to the North Dakota Supreme Court where this conflict is one of the issues being appealed. That case will be set for oral argument sometime in March. In that case, the defendant was found with approximately 93 pounds, or 42,182 grams, of marijuana and he was charged with Possession of Marijuana with Intent to Deliver. Because this case involved over 500 grams of marijuana, the penalty was enhanced from a class B felony to a class A felony offense. His attorney is arguing that, because of the conflict between the statutes, only possession of marijuana charges can be enhanced if the amount of marijuana is in excess of 500 grams while drug trafficking crimes can only be enhanced if the amount of marijuana is in excess of 100 pounds, or 45,360 grams.

In looking back through the legislative history on both of enhancement statutes, the first enhancement that was added was in 1983, enhancing the penalty for delivery of more than 100 pounds of marijuana. There was testimony at a hearing with the Senate Judiciary Committee indicating that there had been several arrests involving large amounts of marijuana including an arrest involving 1,381 pounds of marijuana and another involving 105 pounds of marijuana. There was also concern raised that the penalty should be stricter for those engaged in large-scale trafficking of marijuana.

In 2001, the legislature again modified the drug crime penalty enhancements but this time under the aggravating factors statute. This change included a penalty enhancement for drug crimes involving more than 500 grams of marijuana. However, the 1983 change for the delivery of more than 100 pounds of marijuana was overlooked and the conflicting provisions have been in place since 2001. This bill would eliminate the conflicting laws and treat all marijuana crimes equally with the same drug amount applying to all penalty enhancements.

The second proposed change is to the enhancement for drug crimes committed within a school zone, defined as being within 1,000 feet of elementary and secondary schools, trade and technical education schools, colleges, and universities. Currently, the statute says that if the crime involves the manufacture or distribution within a school zone, the penalty is enhanced to the next level. The North Dakota Supreme Court, in a 2007 decision, interpreted that statute to mean that only manufacture and delivery of controlled substances within the school zone were enhanced, but possession of a controlled substance with intent to deliver or manufacture within a school zone could not be enhanced.

There is also a school zone enhancement for simple possession of controlled substances. If a person possesses a controlled substance within a school zone, the penalty is enhanced to the next penalty level. Therefore, all drug crimes are enhanced if committed within a school zone *except* possession of a controlled substance with intent to manufacture or deliver. This bill would apply the school zone enhancement to all drug crimes.

Thank you.

House Judiciary Committee
Senate Bill 2251
Testimony of Julie Lawyer, Assistant Attorney General
March 15, 2011

Chair DeKrey and Members of the Committee:

My name is Julie Lawyer and I am a prosecutor with the Attorney General's Office. Prior to that, I worked for 9 years as a prosecutor with the Burleigh County State's Attorney's office. I am here this morning in support of Senate Bill 2251.

This bill proposes to make two (2) changes to the drug manufacturing and trafficking laws we currently have. The first change is to eliminate the penalty enhancement for the delivery of more than 100 pounds of marijuana. This law currently makes it a class B felony offense to deliver marijuana. However, if the delivery is for more than 100 pounds or 45.36 kilograms of marijuana, then the penalty is enhanced to a class A felony offense. The reason we are proposing this change is that this statute is in conflict with another enhancement statute.

Under this other statute, there are aggravating factors that enhance the penalty for certain drug crimes. For marijuana, the penalty is enhanced to the next level if the crime involves 500 grams or more of marijuana. With the laws we have in place now, a delivery of marijuana can only be enhanced if it involves over 100 pounds or 45,360 grams of marijuana. All other marijuana crimes are enhanced to the next penalty level if they involve over 500 grams of marijuana.

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House Judiciary Committee
Senate Bill 2251
Testimony of Julie Lawyer, Assistant Attorney General
March 15, 2011

Marijuana with Intent to Deliver. Because this case involved over 500 grams of marijuana, the penalty was enhanced from a class B felony to a class A felony offense. His attorney is arguing that, because of the conflict between the statutes, only possession of marijuana charges can be enhanced if the amount of marijuana is in excess of 500 grams while drug trafficking crimes can only be enhanced if the amount of marijuana is in excess of 100 pounds, or 45,360 grams.

In looking back through the legislative history on both of enhancement statutes, the first enhancement that was added was in 1983, enhancing the penalty for delivery of more than 100 pounds of marijuana. There was testimony at a hearing with the Senate Judiciary Committee indicating that there had been several arrests involving large amounts of marijuana including an arrest involving 1,381 pounds of marijuana and another involving 105 pounds of marijuana. There was also concern raised that the penalty should be stricter for those engaged in large-scale trafficking of marijuana.

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Thank you.