

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2118

2001 SENATE JUDICIARY

SB 2118

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2118

Senate Judiciary Committee

Conference Committee

Hearing Date January 16th, 2001

Tape Number	Side A	Side B	Meter #
1	X		40.5-49.0
1		X	0.0-12.9
Committee Clerk Signature			

Minutes: SENATOR TRAYNOR opened the hearing on SB 2118: A BILL FOR AN ACT TO AMEND AND REENACT SUBSECTION 9 OF SECTION 12.1-32-02 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO SENTENCING ALTERNATIVES.

ROBERT P. BENNETT, assistant attorney general, supports SB 2118. (testimony attached)

SENATOR NELSON I have a problem with line 15. "Order granting the petition must be served upon the bureau of criminal investigation."

ROBERT BENNETT reason "serves" is there to show that they actually had gotten it. To maintain integrity of system.

SENATOR NELSON this came through the interim committee.

ROBERT BENNETT yes.

SENATOR WATNE the very last part, "This subsection does not apply to a person convicted of violating subdivision b or c of subsection 1 of section 19-03.1-23." Does this refer to sex offenders?

ROBERT BENNETT that's the drug offenses that relates to the position or intent to sell.

SENATOR TRAYNOR are those sections the mandatory sentencing bills regarding drugs?

ROBERT BENNETT yes.

SENATOR WATNE where does this bill exclude sexual offenses?

ROBERT BENNETT this does not.

SENATOR DEVER what happens if the judge doesn't like the petition?

ROBERT BENNETT if the defendant who comes in asks for the reduction the judge may say he has not. The order would then be denied, and then he could appeal.

SENATOR TRENBEATH in line 13 "if the court finds that the person has successfully completed the term of imprisonment." Fined by what standard?

ROBERT BENNETT the standard would be by preponderance of the evidence.

SENATOR TRENBEATH wouldn't it be better to take out the assumptions?

ROBERT BENNETT yes.

SENATOR TRENBEATH what we have here is the increase load on the district court judge.

ROBERT BENNETT it may if there is a full blown court case, but this is not likely. It will work like a checklist, to simplify the process.

SENATOR TRENBEATH the district judge will be less likely to sentence for a year or less.

Aren't we trying to correct the BCI unwilling to make a decision.

ROBERT BENNETT not necessarily.

SENATOR TRENBEATH there is a statute that indicates a limit. Better BCI trying to cure hearing where we may or may not know of a notice.

Page 3  
Senate Judiciary Committee  
Bill/Resolution Number SB 2118  
Hearing Date January 15th, 2001

ROBERT BENNETT we are at the mercy of those who bring the information to us. I agree that this may be an increased workload. There are times when probations are extended to modify it. Hearings will be quick.

SENATOR TRAYNOR closed the hearing on SB 2118 (meter # 12.9).

SENATOR TRENBEATH I would like to offer an amendment on line 13 for an insertion of the words: "by a preponderance of the evidence," after the word "finds." SENATOR WATNE seconded the amendment. Roll call vote for the amendment showed 7 YEAS, 0 NAYS, 0 ABSENT. SENATOR WATNE motioned for a DO PASS AS AMENDED, seconded by SENATOR BERCIER. Roll call vote for the amendment showed 6 YEAS, 1 NAYS, 0 ABSENT. SENATOR DEVER volunteered to carry the bill.

Date: Jan 14<sup>th</sup>  
 Roll Call Vote #: ~~SR 2118~~ |

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SR 2118**

Senate Judiciary \_\_\_\_\_ Committee

Subcommittee on \_\_\_\_\_  
 or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken to Amend section 13

Motion Made By S. Trenbeath Seconded By S. Watne

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.	X	
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.	X	X			

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment S. Dever.

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

Date: 1/15/01  
Roll Call Vote # ~~2~~ 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 211B

Senate Judiciary Committee

- Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ~~Amend the TB~~ Vote Pass as amend

Motion Made By Watne Seconded By S. Bercier

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.	X	
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.		X			

Total (Yes) 6 No 1

Absent \_\_\_\_\_

Floor Assignment S. Dever

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

**REPORT OF STANDING COMMITTEE (410)**  
January 16, 2001 8:18 a.m.

Module No: SR-06-1025  
Carrier: Dever  
Insert LC: 18214.0101 Title: .0200

**REPORT OF STANDING COMMITTEE**

**SB 2118: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2118 was placed on the Sixth order on the calendar.

Page 1, line 13, after "finds" insert "by a preponderance of the evidence"

Renumber accordingly



2001 HOUSE JUDICIARY

SB 2118

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2118

House Judiciary Committee

Conference Committee

Hearing Date 03-07-01

Tape Number	Side A	Side B	Meter #
TAPE I		x	1698 to 6121
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chairman DeKrey opened the hearing on SB 2118. Relating to sentencing alternatives.

Bob Bennett: Assistant Attorney General, (see attached testimony).

Rep Wrangham: What are the arguments for this being good public policy, to reduce the class of offense, why do we want this.

Bob Bennett: This bill is the outgrowth of being sentences to the state farm , he then goes to explain his point.

Vice Chr Kretschmar: Does this statute apply to the person who has served his time, could he then apply.

Bob Bennett: If they successfully completed their provision as long as fifteen years ago, it could be reduced.

Rep Onstad: If the person gets his offense reduced, are there no files at all kelp showing he was guilty of a felony.

Bob Bennett: The record will show he plead guilty to a felony and then it was reduced.

Rep Onstad: Does it make a difference if it is a misdemeanor, or A or B.

Bob Bennett: There would be no classification.

Rep Maragos: Asked for an explanation of all the felonies.

Bob Bennett: Gives the explanation.

Rep Delmore: If I do my time and screw up again, can I go through the same process.

Bob Bennett: Yes, you could. I would think that the judge would look at it though.

Rep Wrangham: There is so much confusion on filling out applications, if I have done this and pled guilty and gone through this and had it reduced, how would I answer that would I say yes because I have pled guilty.

Bob Bennett: That is exactly right.

Rep Maragos: What constitutes an arrest.

Bob Bennett: An arrest is when you are taken into custody according to state law.

Rep Disrud: How many time can an offender repeat this process.

Bob Bennett: As often as a judge wants to give the sentence of less than a year.

Rep Delmore: The judge would have access to the record that was changed.

Bob Bennett: That is correct.

Rep Maragos: This would apply only if sentenced to less then one year of a five year sentence.

Bob Bennett: Yes, actual sentence received.

Rep Maragos: If one judge gives harsh sentence and another judge gives out a lighter sentence, does that make sense.

Bob Bennett: That is not fair, but does it make sense, yes. Then goes on to explain.

Rep Maragos: Do you have to go before a judge to get a reduction of sentence.

Bob Bennett: Yes.

Rep Maragos: The judge has so much latitude in the type of sentence in the lowest felon now, would it make sense that we might give him the latitude even if it was over a year, that someone could petition for reduction.

Bob Bennett: The legislature drew the line at one year, you can change that. But this statute has been since 1981.

Rep Wrangham: Do you know if other states have laws like this.

Bob Bennett: It is difficult to gather that information from one state to another. I can say that this is not unusual across the nation.

Rep Mahoney: I don't we couldn't have both.

Bob Bennett: It is already the discretionary for the judge.

Rep Mahoney: What about preponderance of evidence.

Bob Bennett: Preponderance language was added in the Senate

Chairman DeKrey: Any further questions, thank you for appearing. Does any one else wish to testify in support, opposition, neutral, we will close the hearing on SB 2118.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2118b

House Judiciary Committee

Conference Committee

Hearing Date 03-13-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		3288 to 4630
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chairman DeKrey called the committee to order on SB 2118.

DISCUSSION

Vice Chr Kretschmar explains the amendments, Sandi Tabor is there to clarify some points of the amendments.

COMMITTEE ACTION

Chairman DeKrey: what are the wishes of the committee? Rep Mahoney questions the wording on the amendment, the words or less should be removed. The committee agrees that the wording should be changed. Vice Chr Kretschmar moved the amendments, seconded by Rep Mahoney.

DISCUSSION

Chairman DeKrey: Calls for a voice vote on the amendments. Motion carries.

Rep Klemin has an amendment on line 15 page one starting at the comma and after the second word the, put in the words - court may enter an - and after the petition put in the word - which.

Rep Maragos seconds the amendment. Voice vote on the amendments, motion carries. Rep

Page 2

House Judiciary Committee

Bill/Resolution Number SB 2118

Hearing Date 03-13-01

Delmore moved a DO PASS as amend, seconded by Rep Disrud. The clerk will call the roll on a DO PASS as amend motion on SB 2118. The motion passes with a vote of 13 YES, 0 NO and 2 ABSENT. Carrier Rep Disrud.

18214.0202  
Title.

Prepared by the Legislative Council staff for  
Representative Kretschmar  
March 8, 2001

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2118

Page 1, line 11, after "year" insert "or for more than one year but whose sentence in excess of one year or less is suspended"

Renumber accordingly

18214.0203  
Title.0300

Adopted by the Judiciary Committee  
March 13, 2001

YR  
3/13/01

**HOUSE AMENDMENTS TO ENGROSSED SB 2118 HOUSE JUDICIARY 03-13-01**  
Page 1, line 11, after "year" insert "or for more than one year but whose sentence in excess of  
one year is suspended"

Renumber accordingly



