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2007 HOUSE JUDICIARY

HB 1116

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1116

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/9/07

Recorder Job Number: 773 (0-41)

Committee Clerk Signature

Naun Pluise

Minutes:

Chairman DeKrey: We will open the hearing on HB 1116.

Leann Bertsch, DOCR: (see attached testimony).

Chairman DeKrey: Thank you. Further testimony in support of HB 1116. Testimony in opposition to HB 1116.

Scott Busching, ND Sheriff & Deputies Association liaison: For the most part, we had a meeting with Leann earlier and we don't have a problem with a lot of the bill. But there are some things in here. I would call to your attention, pg 3, line 20, subsection 4, where it says that each correctional facility shall maintain sufficient staff to perform all functions relating to the intake and booking, there are facilities such as mine, where both deputies are also certified and trained correctional officers and my policy is that they stay there and assist with the booking process until that individual is placed into classification or into a cell. I hope that doesn't, they aren't necessarily correctional staff, they are deputies but they are able to assist because they are certified as correctional officers, also. I hope that doesn't cause a problem. Subsection 5 is where we have a big problem, "A correctional facility female staff member shall be available (used to be available) now it's on duty at all times. This fiscal note for counties is immense. To take my facility for instance, I have two female officers. I would have to hire in

order to do 24/7, for female officers to be on duty. I would have to have 3.4 more, and if somebody were on extended leave or sick, it would cause a problem. It may not cause me as much problems as it would in Walsh County, who may have a female in their facility for a week, and then they'll go a week without a female. Then have a female in there for two weeks and then two weeks without a female. It's impossible for us to hire help or difficult for us to hire help right now; especially female correctional officers and it would be extremely difficult for us to hire somebody on part-time basis or on-call basis where we would call them in. On this particular subsection, it is the opinion of the ND Sheriffs and Deputies Association that this be struck from the bill. We do feel that it is a reaction to the unfortunate incident that took place in Barnes County; however, we don't see where this would have changed that much and we also think it is a really big swath that affects the local that is having the problem. There are a lot of smaller agencies and even the larger ones that I've talked to, they say that they try and maintain 24 hour female staff, but if there's training or somebody gets sick or something like that, there's often times even in the big facilities in the state do not have that. So that will impact those county budgets tremendously. The rest of this bill, we talked through, we had a few problems mostly with just verbiage and Leann thinks that some of the verbiage will be changed and the rest we don't have a problem with it.

Rep. Kretschmar: On page 2, in the new language under subsection 8 on line 9-13, do you have any problem with needing permission from the Department of Corrections to take an inmate from another state?

Scott Busching: We've talked this one over. We didn't have a problem with us to begin with, because we look at it as an individual inmate and some of this wording can be changed and just take the individual inmate out of there and just replace it. What this is designed to do is prohibit county facilities from getting dumped on by CA and places like that, who are actively

searching for cells right now, and they don't want them in the state and when they are released that they would stay here. I only live 18 miles from the Montana line, and am building a new 116 bed facility expanding to 140 beds. I plan on paying for some of that with contracting with Sydney, etc. out of state. This only deals with contract, not the individual offender. So I have been assured that I won't have any problem with entering into a contract, having it reviewed by DOCR, approving that contract and I can have that cell filled. We don't have a big problem with that. We would like to take individual offender out and this only deals with contracts, not so much the extradition or we pick up somebody from MT on a warrant or anything like that. That isn't covered here. This is just entering into contracts with other states, so I don't have a problem there.

Rep. Delmore: As you expand your facility, how many female prisoners are you looking at having; I think that's part of the problem that Leann is trying to address in here. They should be supervised properly. If you're expanding, you are going to planning on taking females, wouldn't it be a good idea to provide supervision.

Scott Busching: Yes. We are looking at that. We fully intend to run this facility by the sheriff and county commission to set up our policies on that; I just recently hired one more female officer and it took me some time but I did find one in anticipation of having more females. If I get a population that is such that it looks like it's going to be causing a problem, I am hoping that I can go to the State and say I need more on there; I need more females here because I am housing 15-18 females. In fact, when I am looking at the original plans calling for 24 bunks expanding to 36 in the female section. If we get up to that, certainly we are going to be having somebody on full-time. We don't have a problem with the intent of this, but we have a problem with this, this doesn't address the Walsh County situation, doesn't address the Richland

County situation where they don't always have females there. They are not going to expand but yet they are going to be required to have 24/7 coverage.

Rep. Delmore: Just to continue with one more question. How many county and city jails do you think would put an added liability on the prison system?

Scott Busching: All of them right now.

Rep. Delmore: Because all of them are understaffed.

Scott Busching: I was talking with Sheriff Heinert this morning, and he said he could not meet that requirement right now. Cass County can meet it. The other sheriffs that I have talked to are extremely concerned about this and the added fiscal responsibility.

Rep. Delmore: One more question, without that supervision, are we not leaving ourselves open to some liability issues.

Scott Busching: In the jail situation, we try to minimize both, but we are always open to liability for any number of reasons. I don't know if we can eliminate all of those risks. I think the risk is acceptable with having a female available and we always do that. We have a matron list. I have two female sworn officers that are available to come over and help, and so far it has worked very well for us.

Rep. Onsted: In your discussion of the language with DOCR, in your group, is there money available now or is it your recommendation to amend.

Scott Busching: We met for coffee this morning about 9:00 am and we came together with Mr. Sorenson to work some of these smaller things out and we don't want to get nitpicky on this. There are certain things that we can live with in here, that aren't a problem.

Rep. Koppelman: Regarding the question Rep. Delmore asked about the female staffing. If this were to become law now, are there other options for county and city jails, for example, if the county seldom have a female inmate, and all of a sudden you have one, are there

agreements with other counties that might have that kind of staffing to send them we they are needed.

Scott Busching: That was also discussed and some of the bigger facilities feel that we will be coming down for female prisoners. We don't look forward to that.

Rep. Charging: Why is this such a problem?

Scott Busching: If a county cannot meet this requirement and have female correctional officers, if they get a female they are going to bring them to me; this will happen with a lot of the other counties, then my facility is no longer adequate.

Rep. Charging: How many jails are in ND?

Scott Busching: I'm not sure of the exact number of jails. I believe there are 13 Class A and 31 total jails.

Rep. Charging: The issue that happened in Cass County, will we see more of that.

Scott Busching: We don't know that. In the scenario where a female is only in charge of the female section and a male in charge of the male section, that may have happened, but that would certainly add a burden to me, because the female officers that I've had now work both sections and if they were unable to work the male section, I would have to get another male officer and it is going to increase my staff budget even more. In a perfect world, yes, that would be great.

Rep. Charging: It is a burden, no question about it, but we have to be prepared.

Scott Busching: I understand that. Not only is it a fiscal burden, there are just not that many female correctional officers out there, nor are there that many females interested in becoming a correctional officer. I had to beg for 6 months for a female correctional officer. I finally found one. How I would find three more, I don't know how I would do that.

Rep. Meyer: Is your lack of finding a female correctional officers because of a lack of desire or degree?

Scott Busching: It's probably salaries and the working conditions. That may change with the new facility. It's not just females that I have trouble hiring, also the males. I give them a tour of the current facility and what's going on and they never come back.

Rep. Meyer: Is there a degree requirement?

Scott Busching: No there is not, just a high school education. There is a training requirement that deals with the correctional officer training.

Chairman DeKrey: Now if you could only convince the inmates not to come back. Thank you. Further testimony in opposition to HB 1116.

Glenn Ellingsberg, Cass Co. Jail administrator: (see attached testimony).

Rep. Delmore: In the Cass Co jail, which is the ratio of female/male. What are your total numbers and how many are males and how many are females.

Glenn Ellingsberg: We have approximately 230 inmates at any given time; 23% of those are females and 77% are males. So we are running around 30-32 for an average.

Rep. Delmore: Do find that the female population is increasing. We have more female prisoners than we have in the past several years.

Glenn Ellingsberg: The female population by national standards is probably one of the fastest growing populations that the jails and prisons are seeing at this point in time. With the increase in drug use it has caused a lot of white collar crime in the female populations; therefore, we are seeing a lot of drug addictions and some of your other problems including some gambling problems, by stealing from their employers. So we are seeing a higher increase of females within the county jails.

Rep. Klemin: On the amendment that you talked about, on page 3, subsection 3, just a point of clarification, it says upon the request of the local administrator, are you talking about the person like yourself, who is the jail administrator, or are you talking about the governing body that's actually in charge of your facility.

Glenn Ellingsberg: I knew that question was going to come up, and the local administrator was in the previous paragraph also. I would anticipate that the local administrator would be under the control of the governing body and not be requested unless the governing body would request it, then they would do so. So I kept the same wording as the previous paragraph. But certainly the local governing authority is what I would think.

Rep. Koppelman: What is the relationship between the DOCR and the other jails in the state right now, in terms of supervision or oversight of who you do and don't let into your facility, or a grievance you make with other facilities, whether they are in ND or other states?

Glenn Ellingsberg: At this time, there is no oversight by the DOCR. There are very few county jails that contract with state agencies or facilities outside the state of ND. The primary one would be the federal government, and almost all of the jails will contract with the federal government. This does not pertain to that section in law; there is a previous section that deals with that. I think it is too early to determine whether or not we are going to be a dumping ground. I understand that there are other states and prison systems that are looking for places to put inmates. But if you look at the population and jail space available in the state of ND, they found that there wasn't enough room for state prisoners within county jails. So the potential of us housing a lot of out-of-state prisoners is almost non-existent; therefore, in reality I'm not sure that this is necessary at this time and place. It may be something that the Legislature wants to review with the DOCR and discuss it with local jails over the next two

years, but at this point in time I really see this as being an infringement and attempt by the Department to veto what the county is doing.

Rep. Koppelman: So this really is a key change in policy in the way we handle it in ND, instead of leaving it up to local control or county control in case of county jails vs. a state agency or entity.

Glenn Ellingsberg: Yes, in my opinion it would be. The DOCR inspects our facilities and does shut down, and gives our rules and regulations that we must follow. We adhere to them, we don't have a choice. But as far as contractual, we've had no oversight on that.

Rep. Koppelman: As you may know, we do have interstate compacts. I assume this is an attempt to manage that or oversee that. Is there another way to do that, do you think there is a problem, is there any central control point to make those things work.

Glenn Ellingsberg: As I said, the number of inmates that potentially come into the state of ND from outside is low. The concern, I believe by the DOCR is that someone from outside the state will come in, which is a very high level offender and maybe a number of jails that aren't classified to house them at that level. But I think that those could be handled through the rule process, saying that you could not hold more than you are classified to do. The DOCR can certainly identify and clarify what those are. The other thing is that, that the presumption is that they are coming here and when they are released they are going to go back to where they come from. If they are from California, most likely they're not going to want and stay in ND; they are going to want to go back to family and friends. I don't see that as a problem. As far as the type of individual that we house in our facilities, my jail right now, we have Alphonso Rodriguez. A very high profile individual and Mo Gibbs from Barnes County is in my facility. I already house very high profile offenders. A lot more of them are federal prisoners, you won't

recognize the names. I don't see it as being necessary at this time and place and therefore we would really like to see it not included in this bill.

Rep. Koppelman: The issue that was discussed earlier with the sheriff was his concerns about housing females. I assume that what would happen logically, if that were to become law right now, if you couldn't have that kind of staffing, is that they would see those facilities spike, where the smaller would ask that the females be housed with the bigger jails. Would that be a burden on the larger facilities, or is that something that can be handled.

Glenn Ellingsberg: It would be a burden. I think it is important to note that the problem isn't as fiscally important to the counties, although the smaller counties would certainly have a fiscal impact. The problem is the staffing for females, as Sheriff Buschee said is very difficult in smaller communities to find female workers to work at their facilities. I am fortunate, I have a very large population base to draw from and therefore I do get a number of females that apply. But the ratio between the number of males and females are like 5 to 1. So if you are getting that in a large area such as mine, you take a smaller county jail where they may only get 5 applications or maybe only 2 applications for a correctional officer, they won't get any females. Then what do you do? You're actually going to enact into law something that they will be unable to comply with. The second part of your question, housing them in other facilities. It will be ideal if Cass County, Burleigh County, Williams County could take females from other jurisdictions. But my female high is 48 beds. At times I am already at or close to exceeding my bed capacity for females as it is. I can, at times, maybe take some females from other surrounding counties such as Traill County and Steele County; but very limited. So to expect the larger jails to be able to take females at the time they need to may be an impossibility. If we have the bed space, we will help out.

Rep. Meyer: In the Williston situation, are you paying more money to contract with an out-of-state for a high profile or a high level. Do you get more money than for someone who's a low risk?

Glenn Ellingsberg: No, our contract is basically the same for everybody. We have one set fee, whether that is a murder suspect or somebody on a misdemeanor DUI arrest.

Rep. Charging: In light of what you said about the female population rising, it's obviously an issue. What solution do you have?

Glenn Ellingsberg: That's a difficult question to answer, but let me try. Since the timeframe that most females are within the smaller jails is extremely limited; not only because the jail wants to be rid of that female. The states attorney that prosecutes the case also wants to process it quickly and the judge normally sees that they want them processed, so their length of stay is fairly small. With the ability of a matron to be available for those times that they are needed, I think that almost 99.9% of the prisoners we might have, the one concern that I think you are focusing on is the Moe Gibbs incident in Barnes County. Please, let me tell you that can happen at the Penitentiary, it can happen in my facility, it can happen in any facility regardless of the ratio of female to male guards. Unless you completely isolate the female population from male guards, and vice versa, which is almost an impossibility because of the equal rights and constitutional provisions in how we deal with our staff, you're not going to resolve that issue. It could occur, will it occur, hopefully not. We have things in place to make sure it doesn't occur, we think so. I think internal policies of the jail along with the management of that facility, is as important as the ratio of females to males. Therefore, although I think the intent was good, realistically I think you're going to find it is almost impossible to do that at this time; especially with the small rural settings.

Chairman DeKrey: Thank you for appearing before our committee. Any further testimony in opposition to HB 1116. Before I close the hearing, I would ask Ms. Bertsch, are you still in negotiations with the counties and are we going to be see something to fix this, or are you going to leave it to the legislature to get it right.

Leann Bertsch: We'll have some discussions afterwards.

Chairman DeKrey: We will close the hearing on HB 1116.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1116

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/15/07

Recorder Job Number: 1046 & 1123

Committee Clerk Signature *Aaron Penrose*

Minutes:

Chairman DeKrey: We will take a look at the amendment on HB 1116. This amendment from Ken Sorenson doesn't seem to fit. We will take this up later. We will hold off until after the floor session.

(Reopened later in the afternoon session.)

Chairman DeKrey: We will take a look at HB 1116.

Ken Sorenson, Asst. AG: When I looked at my amendments, I saw a typo, a new set of amendments are being passed out.

Chairman DeKrey: Does this amendment take care of the concerns that the sheriffs had to it.

Ken Sorenson: The jail administrator, Glenn Ellingsberg, wanted the whole section struck out of the bill. But in conversation with him later, he thought if it were in the plural instead of the singular, they could live with it. As a matter of statutory construction, singular includes plural and plural includes singular, but this makes this more understandable to read. The next concern was also from Glenn Ellingsberg from Cass Co., and that goes to page 3, line 1, at the top where he wanted to insert the language about the correctional facility would have to request that kind of certification. He was concerned that the DOCR would require that facilities

would have to house prisoners and his suggestion was to include language, "upon the request of the correctional facility administrator" and then Rep. Klemin suggested "governing body of the correctional facility" so that is where we came up with that language. The reason for that subsection to begin with, was to address New England, which is a contract facility. We have a statute with a sunset clause, but there's been some complaints in that statute because it is contracted for female prisoners. We want to make this neutral. Any facility that meets the criteria could potentially do this. Also on page 3, line 20, which was suggested by Sheriff Buschee from Williams County that he asked about deputies. In further conversation afterwards, the discussion was that there are a number of correctional facilities that routinely bring in their sheriff's deputies to help with the jail and in most instances, these sheriff's deputies start off as correctional officers and were moved up to deputy sheriff, or that they had been facility trained by DOCR and this amendment will allow multi-correctional facility staff as well as sheriff's deputies to do the jail operations. Glenn Ellingsberg was also okay with the change on page 3, line 1, inserting "upon the request of the governing body of the correctional facility."

Rep. Klemin: Sheriff Buschee had the concern about the requirement on page 3, line 23, subsection 5 involving the female staff on duty at all times. According to my notes he said that was difficult because it is hard to hire people part-time or on an on-call basis to have a female on duty at all times as opposed to being available. Did you give any thought to making the change on that line.

Ken Sorenson: Yes, the DOCR discussed that and they are the ones that put in that request to change it from available to on-duty. They know this is a difficult thing for the jails. They are aware of it, but they want to communicate the problem they are having and there was some discussion as to whether that should stay the same. They are aware of the financial problems

that the counties would have with this. This is a problem. They wanted to bring this problem out and call attention to it. They are willing to leave it up to the committee as to what should be done.

Rep. Delmore: I move the AG's amendments.

Rep. Koppelman: Second.

Chairman DeKrey: Any discussion.

Rep. Koppelman: On page 2, I know there was a concern about the new #8 on lines 9-13, restricting the local/regional correctional facilities from contracting with other states. This is different than the way it is done now.

Ken Sorenson: The amendment as I indicated earlier in changing the singular to plural.

Glenn Ellingsberg in his written testimony stated that he wanted that deleted out, but he was okay with the change. So it would say that they would not contract with another state to retain offenders charged with, or convicted of, etc.

Rep. Koppelman: What net effect would that have, you could contract to house one offender but not more than one.

Ken Sorenson: The net effect is actually, as I explained earlier, it doesn't really make a difference under the statutory construction because singular includes plural and vice versa unless it is provided for otherwise. The DOCR's position was that this makes this subsection more understandable to correctional facilities and governing bodies that would contract for anyone from one to another, that folks would do a separate contract each time for an out-of-state offender that it would be simpler.

Rep. Koppelman: The practical impact of this is that in a border area, as Mr. Ellingsberg talked about in Cass Co., it is relatively common for them to house prisoners from another

state. This would still allow that you're saying. This would not allow them to enter into a large-scale contract to house people on a regular basis or what.

Ken Sorenson: It would still allow any county, whether a border county or a midsize county to contract with out-of-state jurisdictions, other states, other correctional facilities to house offenders, it just requires that they run those contract past the DOCR for approval.

Rep. Koppelman: This is a power grab by the DOCR saying we want to supervise all of this, when in fact that's not their job now.

Ken Sorenson: The DOCR has changed because they are concerned that out-of-state will try and send a lot of violent offenders into the smaller local jails.

Rep. Koppelman: So it's a law enforcement concern.

Ken Sorenson: Just as much.

Chairman DeKrey: Further discussion on the Sorenson amendment. We will take a voice vote. Motion carried.

Rep. Klemin: I would move to further amend this bill, on page 3, line 23 to delete the overstrike over the word available and delete the words "on duty".

Rep. Dahl: Second.

Rep. Klemin: I just wanted to talk about that briefly. Sheriff Buschee, I believe was speaking towards the ND Sheriffs and Deputies Association, and was saying that it is hard in the jails to hire females at all, much less have one there 24 hours a day, when females are confined there. He said he is able to get someone to come in as necessary, but said that having someone there at all times on duty would be difficult and also hard to hire anybody on a part-time or on-call basis. According to Ken Sorenson, the DOCR didn't sound like they had their heart set on that, they were going to leave it up to the Committee.

Rep. Charging: True, DOCR doesn't know what to do and certainly the sheriffs don't know what to do either. But do you think that within our committee we could help find something for them. This will help the immediate problem by not changing a law that affects every county in the state to hire female staff; but this won't solve the problem in the long run. The meth problem is going to be affecting many more families, affecting mothers, women in the household. We are not helping. I would like to recommend a study.

Chairman DeKrey: You can still have a study thrown into the hopper. Further discussion on the Klemin amendment. We will take a voice vote. Motion carried.

Rep. Koppelman: I would move that on page 2, lines 9-13, be stricken.

Rep. Boehning: Seconded.

Rep. Koppelman: The reason for the amending is that I really believe, we talk a lot in this assembly about local control and it seems to me that this really flies in the face of that. We have a lot of different kinds of correctional facilities in the city and county level in our state. They all have different needs, different requirements, different issues that concern them and they have to deal with them on a day in and day out basis. Frankly, I haven't seen any evidence that they are doing a bad job of that. I haven't heard law enforcement in here saying, yeah get these folks out of our jails, the jails are where they belong. In fact, we have law enforcement people expressing their concern about this bill. I really think that if it isn't broken, don't fix it.

Rep. Meyer: Someone testified that jails in CA were trying to contract with the small jails in ND to dump their prisoners. Is that really happening?

Rep. Koppelman: I don't know the answer to that question. I guess I have not been made aware of a huge problem in ND, so maybe this is pre-emptive. I do know that Mr. Ellingsberg was here from our county, they have a relatively new jail there after building a new one to

replace the old, dilapidated building, and as a result of that I think they do have folks, especially being a border county, and I realize that this could apply to any county, but in the case of those who are near MN or MT, I think it's something that certainly should be left to the discretion of that local jurisdiction as to whether to house folks from other states or not. They can make an informed decision.

Rep. Griffin: The local jurisdictions could be looked at as being from a monetary standpoint, more of a consideration than public safety.

Rep. Boehning: I think there is a lot of contracting going on with the federal government within the state, by bringing in the same people that were referred to. I am in favor of moving this amendment forward.

Rep. Onstad: That section 8, there are several facilities under construction, is this a concern with the DOCR that other facilities are in competition with the DOCR and is this going to be a bidding war for people from other states.

Chairman DeKrey: That might be the unspoken problem, I don't know. I will mention on the Moe Gibbs situation, that the former sheriff that was just defeated in the election requested from the veterans service officer a copy of his DD214, which is his discharge papers, which showed on there he had served time for in the Navy, and he never picked it up. It wasn't that the information wasn't readily available, it was already there at the courthouse, and he never went and picked it up.

Rep. Kingsbury: Is this going to make a whole lot more paperwork, time lapse here in getting someone moved, if they have to have written approval from DOCR.

Chairman DeKrey: I don't know. I think it's like Mr. Sorenson stated, it's a public policy decision by the legislature. I think we need to decide what we want to do in this committee. If the Senate disagrees it will go to a conference committee.

Rep. Boehning: It seems that if you bring one person in, you have to have permission from DOCR, is that how I read that.

Chairman DeKrey: I think it means the original contract, once they approve the contract, and then it will just flowing back and forth. It wouldn't be each individual inmate, but before a city or county would do that they would have to go to DOCR and get permission to contract and I think the counties feel that with the investments they are making to these new regional correctional facilities that they would just as soon run it themselves in their county or at city level. They don't want the state involved.

Rep. Heller: On Glenn Ellingsberg's written testimony, he did request that we would consider deleting those lines and also we would have to delete where it says on page 1, line 20 because it says subject to subsection 8, if we deleted that, that would have to come out.

Rep. Klemin: That is in written testimony, but when he stood at the podium and spoke, he changed that a bit, saying their concern was with individual offenders and not so much with the issue of contracting at all. So he kind of revised what he said when he spoke to us. He was saying, as I understood it, approval of DOCR regarding the contracts was okay, but not for individual offenders.

Rep. Koppelman: The information I have from Cass Co. is that they are still very concerned about that.

Chairman DeKrey: Any further discussion on the Koppelman amendment. We will take a voice vote. Motion carried. We now have the bill before as amended.

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

Rep. Wolf: Seconded.

14 YES 0 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Boehning

FISCAL NOTE
Requested by Legislative Council
01/17/2007

Amendment to: HB 1116

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB1116 relates to 1)housing of inmates in city, county and regional correctional centers 2)supervision of inmates 3)equalization of prohibited acts in a correctional facility and 4)inspection of correctional facilities. Fiscal impact either undeterminable or not anticipated

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

n/a

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

n/a

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

n/a

Name:	Dave Krabbenhoft	Agency:	DOCR
Phone Number:	328-6135	Date Prepared:	01/17/2007

FISCAL NOTE
Requested by Legislative Council
01/02/2007

Bill/Resolution No.: HB 1116

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
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1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB1116 relates to 1)housing of inmates in city, county and regional correctional centers 2)supervision of inmates 3)equalization of prohibited acts in a correctional facility and 4)inspection of correctional facilities. Fiscal impact either undeterminable or not anticipated

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Sec 3 of HB1116 requires a female staff member to be on duty when a female inmate is confined in the correctional facility. The DOCR is unaware of the gender makeup of staff, facility staffing patterns and the frequency of females being confined. As a result the fiscal impact, if any, of this section is undeterminable by the DOCR.

Sec 5 of HB1116 allows the DOCR to assess the cost of inspections, monitoring, and investigations to the applicable correctional facility when an order of noncompliance or closure is issued. For the 07-09 and the 09-11 biennia the DOCR does not anticipate issuing any orders of noncompliance or closure, as a result NO fiscal impact is estimated. However, if such orders are issued it is estimated the costs related to the issue of an order of noncompliance to be \$6,500 and the costs related to the issue of an order of closure to be \$6,500.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

n/a

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

n/a

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

n/a

Name:	Dave Krabbenhoft	Agency:	DOCR
Phone Number:	328-6135	Date Prepared:	01/08/2007

NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION
PROPOSED AMENDMENTS TO HOUSE BILL 1116

Page 2, line 10, replace "an offender" with "offenders" and replace "has" with "have"

Page 3, line 1, after "rehabilitation" insert ", upon the request of the governing body of the correctional facility,"

Page 3, line 20, after "sufficient" insert "law enforcement officers with correctional training or trained correctional facility"

Renumber accordingly

NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION
PROPOSED AMENDMENTS TO HOUSE BILL 1116

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Renumber accordingly

House Amendments to HB 1116 (78200.0101) - Judiciary Committee 01/15/2007

Page 1, line 20, remove "subject to subsection 8"

House Amendments to HB 1116 (78200.0101) - Judiciary Committee 01/15/2007

Page 2, remove lines 9 through 13

House Amendments to HB 1116 (78200.0101) - Judiciary Committee 01/15/2007

Page 3, line 1, after "rehabilitation" insert "upon the request of the governing body of the correctional facility."

Page 3, line 20, after "sufficient" insert "law enforcement officers with correctional training or trained correctional facility"

Page 3, line 23, remove the overstrike over "~~available~~" and remove "on duty"

Renumber accordingly

Date: 1/15/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1116

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as Amended

Motion Made By Rep. Onstad Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Boehning

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

REPORT OF STANDING COMMITTEE

HB 1116: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1116 was placed on the Sixth order on the calendar.

Page 1, line 20, remove "subject to subsection 8"

Page 2, remove lines 9 through 13

Page 3, line 1, after "rehabilitation" insert "upon the request of the governing body of the correctional facility."

Page 3, line 20, after "sufficient" insert "law enforcement officers with correctional training or trained correctional facility"

Page 3, line 23, remove the overstrike over "~~available~~" and remove "on duty"

Renumber accordingly

2007 SENATE JUDICIARY

HB 1116

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1116

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: February 26, 2007

Recorder Job Number: 3854

Committee Clerk Signature

Mona L. Solberg

Minutes: Relating to correctional facilities.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following hearing:

Testimony in Favor of the Bill:

Leann Birtsch, Dir. ND Dept. of Corrections and Rehabilitation, Introduced the bill (meter 2:13) and gave her testimony – Att. #1.

Sen. Nething asked what is the problem? (meter 9:43) This is a clean-up bill of the "jail rule" statute. She referred to last sessions increases in the house and they want to take out the "sunset" clause. Spoke of the women's institute and the condensing of the compliance paragraph. **Sen. Nething** asked who put the bill together and she replied it was done with **Ken Sorneson** and the jail inspectors. The county people were not involved only the ones with the women's correctional facility.

Sen. Lyson asked (meter 13:06) in section 3, the amendment, subsection 4, with law enforcements training why are you requiring this? This is to address the booking procedures and the forms for proper procedures. This has to be correctly and not all highway patrol have

the paperwork training. **Sen. Lyson** stated that this would be impossible to do. She stated that it can be a joint effort if they have the training to do this. He spoke of a situation. They reviewed the current process. **Ms. Bertsch** stated that if the procedure is done properly as a protection to the facility.

Sen. Lyson stated that he would like to do an amendment to narrow this down.

Terry Traynor, Assoc. of Counties (meter 18:50) At the original hearing the room was filled with highway patrol, the result is that we have worked the bill out, and there are no officers hear today.

Testimony Against the bill:

None

Testimony Neutral to the bill:

None

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1116

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: February 27, 2007

Recorder Job Number: 4001

Committee Clerk Signature

Maria L. Halby

Minutes: Relating to correction facilities.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

Sen. Lyson stated that the sheriffs are ok with the bill. They are not completely happy but they got the stuff out of it that the house removed and can work with it. The department of corrections were really flexing there muscles with the original bill. The jails should be run by the counties not the department of corrections. He made reference to a Jamestown issue.

Senator David Nething, Chairman closed the hearing.

Sen. Sen. Olafson made the motion to Do Pass HB 1116 as amended and **Sen. Fiebiger** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Lyson**

Senator David Nething, Chairman closed the hearing.

Date: 2-27-07

Roll Call Vote # 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1116

Senate _____ Judiciary _____ Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Olafson Seconded By Sen. Fiebigler

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Fiebigler	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Lyson

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

REPORT OF STANDING COMMITTEE (410)
February 27, 2007 1:30 p.m.

Module No: SR-37-4020
Carrier: Lyson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1116, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1116 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

HB 1116

HOUSE JUDICIARY COMMITTEE
Representative Duane DeKrey, Chairman
January 9, 2007

North Dakota Department of Corrections and Rehabilitation
Leann K. Bertsch, Director
Presenting Testimony Concerning: HOUSE BILL 1116

Chairman DeKrey and Members of the Committee, for the record, I am Leann Bertsch, Director of the Department of Corrections and Rehabilitation.

Section 1 of House Bill 1116 provides for amendments to Section 12-44.1-2 of the North Dakota Century Code. It adds Chapter 54-40.3 to subsection 3. There are two joint powers chapters in the Code, Ch. 54-40 and 54-40.3. Ch. 54-40 was enacted in 1955 and chapter 54-40.3 was enacted in 1993. Chapter 54-40.3 has similar language to Chapter 54-40 and was referred to as the "Tool Chest" Bill and provides methods for political subdivisions to consolidate and streamline government and expands the ability to contract to allow a joint powers agreement between two entities that do not share the same power. Chapter 54-40 only grants the authority to a political subdivision to do jointly what it may do separately.

Section 1 of House Bill 1116 provides for new subsections to Section 12-44.1-02. Section 12-44.1-02 presently has an unnumbered paragraph. Section 1 of HB 1116 breaks this down into numbered subsections for clarity, and then adds a new subsection that requires DOCR approval before a local correctional facility may contract to house felony offenders from other jurisdictions. This is to keep other states from "dumping" potentially high risk and violent offenders in ND and requires them to go through compact processes to allow such offenders in ND.

Section 2 of House Bill 1116 adds a new subsection to Section 12-44.1-06. A new subsection is added to Section 12-44.1-06 in lieu of repealing the sunset clause on Section 12-44.1-06.3, which allows grade one jails that have contracts with the DOCR to house women prisoners to hold the prisoners for more than one year. The proposed subsection provides that the DOCR may authorize correctional facilities to confine inmates for more than one year if the correctional facility meets criteria established by the DOCR, including a classification system, education and vocational education programming, treatment, work and prison industries, medical, and recreation, essentially what is provided in a state facility. This will allow the DOCR to keep contracting with Southwest Multi-County for the operation of the Dakota Women's Correctional and Rehabilitation Center.

Section 3 of House Bill 1116 provides for amendments to Section 12-44.1-13. Subsection 4 of Section 12-44.1-13 requires correctional facilities to maintain sufficient staff to perform correctional facility functions; however, some facilities have had law enforcement staff book inmates into jails. The amendment to Subsection 4 is to make it

clear to correctional facilities that the intake and booking of inmates into a correctional center is a correctional facility function and not a law enforcement function.

The DOCR recognizes possible staffing issues with respect to the amendment to Subsection 5 of Section 12-44.1-13 requiring a female correctional officer be on duty when there are female inmates in the facility; however, the DOCR feels this is necessary to address potential problems with cross-gender searches of females by male officers and to also reduce the potential for sexual assault of females by male correctional officers. Unfortunately, this has happened in the county jails in the past and is most recently evidenced by the criminal prosecution against a Barnes County Correctional Officer, Moe Maurice Gibbs, for sexual acts against at least 5 different female inmates.

Section 4 of House Bill 1116 provides for amendments to Section 12-44.1-21. Section 12-44.1-21 addresses contraband in correctional facilities, namely drugs and alcohol; however, it fails to address weapons and tobacco, and its penalty provisions for drug offenses are not consistent with the penalties under the controlled substances act. For example, it is a class A felony to deliver methamphetamine on the streets, but if a visitor to a jail brings in methamphetamine to an inmate, it is a class B felony. The proposed amendments mirror the DOCR's Prisons Division statute, NDCC Section 12-46-21.

The proposed amendments to subsection 1 of 12-44.1-21 make it a class A felony. Possession of a controlled substance remains a class B felony, as it is under present law.

The possession or delivery of alcohol remains a class A misdemeanor.

If a facility has enacted regulations prohibiting possession of tobacco, then it is a class B misdemeanor to possess or deliver tobacco. In addition to the problems of second hand smoke, cleaning the facility, and the black market trading and extortion caused by tobacco, there is also a safety problem in inmates having access to lighters and matches that may be used to start fires.

Section 12-44.1-21 in its current state does not address the possession of weapons in a correctional facility. The proposed subsections 5 and 6 to Section 12-44.1-21 make it a class B felony to possess or deliver weapons that are not classified as dangerous weapons under ND's weapons chapter 62.1-01, and make it a class A felony to possess or deliver weapons that are classified as dangerous weapons under chapter 62.1-01.

Section 5 of House Bill 1116 provide for amendments to Section 12-44.1-25. NDCC Section 12-44.1-24 requires the DOCR to prescribe rules establishing minimum standards for local correctional facilities and the care and treatment of inmates. It also requires the DOCR to appoint a correctional facility inspector to inspect correctional facilities, including health, fire and life safety, security, rehabilitation programming, treatment, and training. The DOCR has promulgated correctional facility rules, it has an inspector, it coordinates training and it provides assistance to correctional facilities.

Sections 12-44.1-25 requires the inspector submit an inspection report to the DOCR and to the facility administrator and specify in which areas a facility is compliant with standards and in which areas the facility is not compliant. The amendments authorize the Director of the DOCR to issue an order of non-compliance when a facility is non-compliant with minimum standards and establish a time within which the facility must come into compliance. If the non-compliance is limited and minor, the amendments allow the Director to handle it informally through a letter. The proposed subsection 3 will allow the Director to assess its actual costs for inspection and monitoring a facility after it has issued an order of non-compliance.

This section presently authorizes the Director of the DOCR to issue an order for full or partial closure of a facility if the deficiencies in a correctional facility present significant health and safety issues to inmates, subject to an administrative hearing under NDCC Chapter 28-32. The amendments provide two situations for closure: (1) if a facility has failed to complete required corrective action following an order for non-compliance, the Director may order full, partial, or temporary closure; (2) if the extent of noncompliance with standards and state and federal law present a danger to the health and safety of inmates, staff, law enforcement, visitors, or the public, the Director may issue an immediate order for full, partial, or temporary closure. In both cases, the facility may request an administrative hearing in accordance with NDCC Chapter 28-32.

Section 6 of House Bill 1116 repeals Section 12-44.1-27. This section includes a lot of overlap to Section 12-44.1-25, and also provides a procedure in which the DOCR may request judicial closure of a correctional facility through a petition to the district court. The district court may deny the petition, order corrective action, and order closure of the facility. Because the DOCR already has a remedy under Section 12-44.1-25, and in the event it is compelled to employ that remedy, a correctional facility has the right to an administrative hearing and appeal to the district court, this section is not necessary.

Information about Sexual Assault in Prisons

Bureau of Justice Statistics Special Report: **Prison Rape Elimination Act of 2003.**

Sexual Violence Reported by Correctional Authorities, 2004.

By: Allen J. Beck, Ph.D. and Timothy A Hughes BJS Statisticians

- Survey selected more than 2, 700 correctional facilities holding 79% of all adults and juveniles in custody:
 - 8,210 allegation of sexual violence reported Nationwide in 2004.
 - 42% of allegations involved staff sexual misconduct
 - 37% inmate on inmate nonconsensual sexual acts
 - 11% staff sexual harassment
 - 10% abusive sexual contact.
 - Correctional authorities reported 3.15 allegations of sexual violence per 1000 inmates in 2004.
 - Males comprised 90% of victims and perpetrators of inmate on inmate nonconsensual sexual acts in prison and jail.
 - In State prisons 69% of victims of staff misconducts were males, while 67% of perpetrators were female.
- North Dakota allegations of inmate on inmate sexual violence reported by State prison authorities in 2004, by type

Prisoners in custody 6-30-2004	1,176
Allegations of nonconsensual sexual acts	0
Substantiated	0
Unsubstantiated	0
Unfounded	0
Allegations of abusive sexual contacts	2
Substantiated	2
Unsubstantiated	0
Unfounded	0

- Allegations of staff sexual misconduct with inmates reported by State prison authorities in 2004, by type

Reported allegation of staff sexual misconduct with inmates	
Allegations	1
Substantiated	1
Unsubstantiated	0
Unfounded	0

Reported allegations of staff sexual harassment of inmates	
Allegations	1
Substantiated	0
Unsubstantiated	0
Unfounded	1

House Judiciary Committee
Representative Duane DeKrey, Chairman
January 9, 2007

HB 1116 A Bill on behalf of the Department of Corrections

Chairman DeKrey and Committee Members, I am Glenn Ellingsberg and the current Jail Administrator for the Cass County Jail.

I would like to thank you for taking my testimony this morning which is in opposition to this bill in its present form. Although, much of the additions and changes will enhance and clarify existing statutes, there are two subsections that Cass County has sincere reservations about:

The first can be found on Page 2, Line 9 – No. 8 which would require local jurisdictions to ask permission from the Department of Corrections for each felony offender housed from out of state in a local jail or regional correctional facility. Cass County borders Clay County, Minnesota and has already begun discussions with Clay County concerning the housing of inmates within our jail facility. To require written permission each time a felon was moved from Clay to Cass seems overly burdensome and an infringement upon local government's authority to contract with others. The Department of Corrections and Rehabilitation is responsible for inspecting local jails and should not be put in a position to veto who is housed in the facility they certify as compliant. Cass County would therefore request that the Judiciary Committee consider **deleting Lines 9 through 13 on Page 2** and the reference to this sub-section at the end of **Line 20 on Page 1** which reads, **subject to subsection 8.**

The second is on Page 3, Line 1 – No. 3 which appears on the surface to be in response to the need of the Department of Corrections and Rehabilitation's to house state inmates in local correctional facilities for longer than one year. However, as it does not require a mutual consent if the facility meets certain criteria, it could also impose and require a local correctional facility to house inmates for more than one year that have not yet been accepted by the Department of Corrections and Rehabilitation as a state inmate. To assure that this is a mutual determination, Cass County would ask the Judiciary Committee to consider language similar that found in the previous paragraph on Page 27,

Line 28 and insert upon the request of the local administrator after the word
"rehabilitation" on Page 3, Line 1 and before "may" on that same line. Line 1 would
then read: **The department of corrections and rehabilitation upon request of the local
administrator may....**

With these corrections, this bill should be well received by those jurisdictions
having jails or regional correctional facilities.

Thank you.

Glenn D. Ellingsberg
Chief Deputy

HH #1
2-26-07

SENATE JUDICIARY COMMITTEE
Senator Dave Nething, Chairman
February 26, 2007

North Dakota Department of Corrections and Rehabilitation
Leann K. Bertsch, Director
Presenting Testimony Concerning: HOUSE BILL 1116

Chairman Nething and Members of the Committee, for the record, I am Leann Bertsch, Director of the Department of Corrections and Rehabilitation.

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Section 4 of Engrossed House Bill 1116 provides for amendments to Section 12-44.1-21. Section 12-44.1-21 addresses contraband in correctional facilities, namely drugs and alcohol; however, it fails to address weapons and tobacco, and its penalty provisions for drug offenses are not consistent with the penalties under the controlled substances act. For example, it is a class A felony to deliver methamphetamine on the streets, but if a visitor to a jail brings in methamphetamine to an inmate, it is a class B felony. The proposed amendments mirror the DOCR's Prisons Division statute, NDCC Section 12-46-21.

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failed to complete required corrective action following an order for non-compliance, the Director may order full, partial, or temporary closure; (2) if the extent of noncompliance with standards and state and federal law present a danger to the health and safety of inmates, staff, law enforcement, visitors, or the public, the Director may issue an immediate order for full, partial, or temporary closure. In both cases, the facility may request an administrative hearing in accordance with NDCC Chapter 28-32.

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