

2019 HOUSE JUDICIARY

HB 1459

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Prairie Room, State Capitol

HB 1459
1/29/2019
31694

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Caitlin Fleck

Explanation or reason for introduction of bill/resolution:

Relating to peace officer duties or activities.

Minutes:

1,2,3

Chairman Koppelman: Opened the hearing on HB 1459.

Rep. M. Johnson: (Attachment #1&2)

Lt. Rick Richard, McLean County Sheriff's Dept. (Attachment #3)

Rep. Vetter: You are opposed then?

Lt. Rick Richard: Yes, we are opposed to provisions of this. I've been a state trooper and officer up in Washburn, ND, for quite some time now, and there isn't as good of a relationship with the tribal elders as we would like. We have developed relationships with the officers that serve on that sovereign entity, and it has become a very healthy relationship since then. We rely on each other, and work well with each other. They have cultural skills and knowledge that we don't have. They are trained officers, we don't want to see a hindrance on how we can assist each other just because of licensing issues that may occur between our jurisdiction and there's.

Gerald White, Jr, enrolled member of the Mandan-Hidatsa-Arikara (MHA) nation: I am here to support my local and state partners, and describe our relationship. I have over 30 years of law enforcement. Drugs know no boundaries, they flow back and forth between counties of the state. These partnerships that we have are so important in stopping these drugs. MHA drug enforcement has recruited the most experienced officers, and also staff with K-nine specialized units. We are more than willing to assist when called upon to help the other counties, and we don't want to ruin that relationship. There are many scenarios that I could tell you of how we work together with the other counties and their law enforcement officers.

Vice Chairman Karls: On the last part of Rep. Johnson's testimony she stated "this bill seeks to eliminate reserve officers," is that another name for retired law enforcement officers?

Mr. White: Yes, I am a retired law enforcement officer, but now I am a tribal law enforcement officer with the MHA nation and a drug officer. Technically we are reserve officers to the McClain county so that we can work with and help the McClain county officers.

Recessed the hearing.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Prairie Room, State Capitol

HB 1459
2/5/2019
32190

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Caitlin Fleck

Explanation or reason for introduction of bill/resolution:

Relating to peace officer duties or activities.

Minutes:

1,2,3,4

Chairman Koppelman: Reopened the hearing on HB 1459.

Rep. M. Johnson: (Attachment #1)

Mark Freis, Defense Attorney: In addition to serving as a defense lawyer, I was also previously a police officer. I spent 20 years here in Bismarck and 24 years in the ND National Guard. I believe law enforcement is a profession, not a hobby. I am in favor of unification across the state on the training that law enforcement officers receive. I am here today to ask this committee to recommend that Representative Johnson's bill be passed so that the post board can guarantee and give oversight and training to the reserve officers. In 1981, the Peace Officer Standards and Training (POST) board was established to prescribe criteria for minimal standards and take action for the law enforcement officers. The issue here is that those reserve officers who would be able to arrest, issue traffic citations, and use force must meet the minimal requirements established by the POST board. The POST board currently does this and does training and licensing, we are not asking to do away with the professionals that do the training already, we are asking that the reserve officers must also complete the arrest, traffic citation, and force testing that any other normal law enforcement officer must obtain.

Vice Chairman Karls: Have you visited with the POST board, are they willing to take on this added duty?

Mr. Freis: I have emailed and called their office before I talked to Representative Johnson, and he has not gotten back to me so I cannot speak on their behalf.

Rep. McWilliams: How many reserve officers are in the state of ND and how many instances there have been with the excessive force?

Mr. Freis: I do not, this came up as a result of 2 cases in the Cass County. I was concerned that the police officers that are licensed and doing their duty are being circumvented by those officers that chose to volunteer, but don't have to go through the same amount of training. I don't have documentation of the force violations, however. The concern there is that there is no disciplinary action that the POST board can take against the reserve officers if they were to not fulfill their duty properly.

Rep. McWilliams: Do you know how many instances of misconduct there are with certified police officers in the state?

Mr. Freis: No I do not have that. The post board would have the statistics of the officers that have appeared before them.

Chairman K. Koppelman: We did hear some testimony in favor and in opposition, and LT. Richard testified against the bill, and he talked about the diversity of the state. He emphasized the need for this type of assistance, and we prize our second amendment rights here in ND, and this bill would deny that right to carry a fire arm to the reserve officers that have not gone through that training, even though more ND citizens already do have a concealed and carry permit and can carry their weapon. I guess I would just like your thoughts on that? Plus, the idea of should the sheriffs in the various counties and areas be able to train as they see fit?

Mr. Fries: Tribal Officers currently are exempt under state statute. So a concern about the Tribal officers I think would be misplaced, if they obtain those minimum requirements. Secondly, a citizen being able to carry a firearm under the second amendment is a very different question that vesting someone to use force in the situation of an arrest. Police officers have no duty to retreat. They are placed in situations where they have to be proficient in carrying a fire arms. The question of an individual's right to carry a firearm and vesting someone the authority to carry and use that firearm in an arrest are two very different questions. Thirdly, the local control issue. If there is a reason for the POST board, there is a reason for it. The whole purpose of that board is professionalism. They would hard to become proficient and professional in their duties, and they will be able to obtain the requirements. This is a request to establish minimal requirements for the reserve officers in the areas of arrest, traffic citations, firearm use, and being governed by the POST board for regulation.

Chairman K. Koppelman: You cited two cases where this was misused. I don't know how many people have been enlisted for this kind of service in ND. If we have two instances in the state of problems, is that a reason to change the law and force our state to change the law and possibly do something that their budgets don't allow them to do.

Mr. Freis: I certainly understand that, there is money associated with this. To me, the value of human life, the professionalism of the law enforcement officers, and the officers that are doing their duty properly mitigates in favor of establishing these minimal requirements.

Rep. M. Johnson: The amendment I handed out adds "volunteer" the other portion of the code that is requiring licensing, but we don't have a time frame in here and that might be necessary. If this is acted on, we would need adequate time to implement it with the POST board. Cass County does have rigorous training for its reserve officers. The opinion of paragraph 18 is instructive. The question is, is the state willing to take on that liability?

Chairman Koppelman: You're talking about a case that precipitated from Cass county and the finding was rigorous and appropriate?

Representative M. Johnson: The Supreme Court didn't speak to that issue. They said that it could be a problem, but it's not for the judiciary to address, it's for the legislation to address, so here we are.

Chairman Koppelman: So they didn't say that it was a problem, they said that it might be a problem?

Representative M. Johnson: Right.

Rep. McWilliams: How long has the state of ND had the standards that we have had for reserve officers?

Rep. M. Johnson: The reserve officers of that statutes, I'm not sure when that was enacted.

Rep. McWilliams: Do you know how long this has been a problem?

Rep. M. Johnson: Besides the 2 that have already been forwarded to you, I know of no others.

Chairman K. Koppelman: You are adding "volunteers," I don't know how that would work but you would want to require those folks to take the training as well?

Rep. M. Johnson: If you are carrying a badge and the gun and have authority behind you then yes, you need the minimal training. There is the axillary portion of the bill for those that don't carry a gun or have a badge.

Opposition Testimony:

Jesse Jahner, Cass County Sheriff: (Attachment #2)

Rep. Paur: You stated you have no idea in the rest of the state the levels of training. That doesn't come up in you POST board meetings?

Mr. Jahner: The POST board does not oversee the training of every agency. The training is overseen by each individual agency.

Vice Chairman Karls: Do you ever use retired law enforcement for this duty?

Mr. Jahner: We do not, all of our reserved officers that are currently employed go through the same firearm training that we do, and they are certified just like is. So none of them are retired officers coming back to work.

Vice Chairman Karls: But they could be?

Mr. Jahner: Yes, they could be. All of our individuals in our sheriff reserve unit are fulltime employees somewhere else, and then come back and donate their time.

Rep. Rick Becker: That is very extensive training requirements and it surprises me that there are so many people that would have an interest in going through those 400 hours of training, that is interesting. Would you say Cass County is in the top 10% of training requirements for reserve officers?

Mr. Jahner: I haven't looked at the other agencies requirements and what they have available, so it would be hard for me to speculate as to what they have.

Rep. Rick Becker: Are you aware of any other agencies that exceed the Cass County's? Are less than Cass County's? As I understand it, the concern is that law enforcement officers are in a unique position as they interact with citizens, and they have very significant responsibilities. Most of the activities on your list seem to be able to be handled by reserve officers who don't carry a weapon or have the same arresting authority, do you agree with that?

Mr. Jahner: I am not, only because I've never looked into it. I do not agree with that statement for a couple of reason. Number one is that our reserve officers are not allowed to go out and work alone.

How the program works is that if a smaller city in Cass County were to have some event, i.e. a street dance, we would need to provide security at that event. We will then send a licensed deputy and a reserve officer, so then the city only pays for the one deputy while the reserve officer is then donating their time. That way we also get to have 2 deputies there, which we want. There are occasions where we have some reserve offices go out on patrol. They patrol in a car by themselves, but there are many other deputies out on patrol with them as well. The procedure would then be that if the reserve officer were to come across something, they would call it in and another licensed officer would then come and handle it. I will never send an individual out by themselves to work an event where they are wearing a badge or some other identification unarmed. That would not be safe for that individual.

Rep. McWilliams: In your period of service, have you have reserve officers working with you? And in that time how many instances have there been in dealing with disciplinary action for reserve officers?

Mr. Jahner: Yes, reserve officers have been working with the department for as long as I can remember. I wouldn't know the exact numbers, there has been a few instances where we have had to let the reserve officer go. The POST board doesn't oversee this, so then we can't discipline them. The normal course of discipline is that we just release them.

Rep. McWilliams: In the instances with the reserve officers, is that greater or less than the disciplinary actions taken with you other officers?

Mr. Jahner: Less than because we only have about 15 reserve officers, and I have 210 employees.

Rep. Paur: You stress training a lot, but what is your opposition to the bill?

Mr. Jahner: They do not carry a firearm or concealed weapon, because without the program wouldn't exist. I am not going to send people as a reserve deputy without a way of defending themselves. I am not opposed to a training oversight, and making sure that the reserve officers are sticking to a regiment and being overseen by the POST board. I have no problems with reserve officers going through some sort of training. I don't want to see them being totally crossed out.

Representative Simons: We weren't allowed to carry guns or any weapons when I was a reserve deputy. I ran a security company, and the officers that were working for me for them to carry a pistol was almost a joke. So I want to say thank you for what you are doing. What did you say your standards are?

Mr. Jahner: Before we will even deputize them, they need to finish 103 hours of training. They are also required to shoot quarterly, and then also a qualification shoot. The set standard by the POST board is that officers maintain a 70% proficiency rate, and we require a 76% or higher at our agency.

Rep. Magrum: What affect would this have on a rural area?

Mr. Jahner: In Cass county we require public events have 2 officers, so it would lessen the financial burden on those counties by having the reserved and the licensed officers.

Representative Simons: As the sheriff you have the authority to deputize somebody, and you could deputize anyone you want. My first alert on the bill was that it would hamper your ability to deputize someone on the street, and to use deadly force in that situation?

Mr. Jahner: It would still allow us to deputize reserve officers. We would still have the opportunity to deputize officers, under that statute there is a monetary value we would have to pay them.

Chairman K. Koppelman: The bill would give departments a choice, and if the POST board took this over and like you in your area, they'd get the training that they need. However, I worry about some of the rural areas in the state. If the bill passed, they would have a choice of either just not using these kinds of folks or sending them out without the authority to use deadly force, what kind of dangers might that present?

Mr. Jahner: That is not something I am willing to do. There is an event that we staff that is called Johnson's Barn, and there could be up to 500 people there at that event. To send someone there that can't protect themselves, I will not do that.

Chairman K. Koppelman: We think that many times we think that merely possessing a firearm means a deadly force, but is it fair to say that a side arm on your hip that never leaves its holster is still a sight for polite behavior?

Mr. Jahner: Yes, it is a detriment.

Donnell Preskey, Executive Director of the Sheriff's Association: We looked at this bill, and while we don't have many counties that use the reserve officers we still know that they are important and we oppose this bill as it is written for the same reasons that Sheriff Jahner alluded to.

Chairman K. Koppelman: Is there a problem now in terms of the training?

Ms. Preskey: I did send out a survey trying to find out how many counties use the reserve officers, but I did not get much response. From the conversations that I have had, I believe there are very few counties that use them, some of them being very rural.

Chairman K. Koppelman: Have they reported issues with this type of personnel?

Ms. Preskey: No they did not report any issues.

Neutral Testimony:

Erika Thunder, Indian Affairs Commission: (Shared attachment #3 on behalf of Scott Davis)

Rep. M. Johnson: The original bill addresses those that are exempt from licensing. The amendment addresses moving everyone not under that exemption over to the licensing portion. We are not removing reserve officers, altogether, we are just moving them into the licensing portion.

Hearing closed.

Attachment #4 was emailed and attached after meeting.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB1459
2/5/2019
32231

☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Caitlin Fleck

Explanation or reason for introduction of bill/resolution:

Relating to peace officer duties or activities.

Minutes:

--

Chairman Koppelman: Opened the meeting on HB 1459.

Representative McWilliams: Move for a do not pass.

Representative Satrom: Seconded.

Rep. Roers Jones: I was not here for the testimony today, but I think that there is some amending that can be put into place to help appease both sides of this argument. Cass County does not support this bill because it will not allow their reserve officers to carry a firearm. They are already utilizing those reserve officers in their practice, and they are also already doing to the training. There are other agencies in the state that are not providing the proper training or accountability for their officers and I think those are the reserve officers we are trying to protect with this bill. Could we spend a little extra time working on this, and get some amendments that will satisfy the concerns?

Chairman K. Koppelman: We do have a motion for a do not pass, and that would have to be withdrawn in order to do that. Also, we are getting late in the process. We have been talking for weeks now about getting amendments in, and we have had a lot of absences from the committee. With respect to your point, I think the case that was an issue here was a Cass County case, and this bill would affect the other counties and agencies, but from what I've heard the other counties haven't had any instances with these reserve officers. Because of that, I'm not sure if this is really needed.

Rep. Vetter: From what I got from the sponsor is somewhat conflicting when listening to the sheriff. It is being portrayed that we are getting rid of these reserve officers, however, they just have to get licensed now. That would then serve the purpose that we are talking about.

Representative Simons: When I was a reserve deputy, if you were carrying a gun, you were probably a retired officer. Normally no reserved deputies were carrying guns. This saves the tax payers a ton of money. Prisoner transport is another thing that benefits from this. It is

usually a reserve deputy and a licensed deputy. This is a local control thing. If you would have seen the security guards that walk round with guns, I wouldn't want them to have any bullets. Hearing what this sheriff said, they have so much requirement that we don't need to meddle in these affairs. Those 2 cases could have happened to licensed officers too.

Chairman K. Koppelman: If you look at the Supreme Court case, it says that the defendant was intoxicated. It deals with the authority of the officers that had arrested him, and administered the tests. The challenges from the defense were if that officer had the authority to do that, and the court said that under current law they did. The defenses efforts were not sustained, and yet we have this bill that says it should have what they wanted it to be, not what it is.

Rep. Jones: The reason that I oppose this bill is that in testimony they talked about how they go across jurisdiction and get assistance from the other officers, and this bill would interfere with that.

Roll Call Vote: 10 Yes, 4 No, 0 Absent.

Motion passes.

Floor assignment: **Representative Jones**

Meeting closed.

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1459**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Representative McWilliams Seconded By Representative Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Rep. Buffalo	X	
Vice Chairman Karls	X		Rep. Karla Rose Hanson	X	
Rep. Becker		X			
Rep. Terry Jones	X				
Rep. Magrum	X				
Rep. McWilliams	X				
Rep. B. Paulson	X				
Rep. Paur		X			
Rep. Roers Jones		X			
Rep. Satrom	X				
Rep. Simons	X				
Rep. Vetter		X			

Total (Yes) 10 No 4

Absent 0

Floor Assignment Representative Jones

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

Motion carries.

REPORT OF STANDING COMMITTEE

HB 1459: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO NOT PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1459 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

HB 1459

HB 1459
1/29/2019
#1

TESTIMONY IN SUPPORT OF HB 1459
HOUSE JUDICIARY COMMITTEE
JANUARY 29, 2019
BY: REP. MARY C. JOHNSON

My name is Mary Johnson, Representative in District 45, Fargo.

HB 1459 seeks to address an issue raised in State vs. Ngale, a ND Supreme Court case decided in July 2018, a copy of which is accompanying this testimony. In Ngale, the Supreme Court heard argument regarding a denial of a motion to suppress evidence in the lower court. Ngale argued that because he was seized and arrested by a person who was not a licensed law enforcement officer, who did not have authority to investigate and arrest, his motion should have been granted.

Although the Court affirmed the decision of the lower court, it provided in part at [18]:

"Ndumbe Ngale argues that a reserve officer should be limited to a secondary role, because reserves are not fully trained as licensed peace officers. Although this argument may have some merit, it is more appropriately addressed to the legislature, not the judiciary." (emphasis added)

To attorneys, including me, this is not anecdotal, this is instructive.

In oral argument, the prosecutor expressed concern about the lack of standardization and oversight.

This bill seeks to eliminate reserve officers. I am working with Cass County Sheriff Jahner, who is a POST member, to come to a reasonable compromise. We are meeting tomorrow.

I beg the Chair's indulgence to continue the hearing on HB 1459 next week.

HB1459
1/29/2019
#2



North Dakota Supreme Court Opinions ◀▲/?

State v. Ngale, 2018 ND 172, 914 N.W.2d 495

[\[Go to Documents\]](#)

Filed July 11, 2018

[\[Download as WordPerfect\]](#)

HOME
OPINIONS
SEARCH
INDEX
GUIDES
LAWYERS
RULES
RESEARCH
COURTS
CALENDAR
NOTICES
NEWS
SELF HELP
SUBSCRIBE
CUSTOMIZE
COMMENTS

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

2018 ND 172

State of North Dakota, Plaintiff and Appellee

v.

Kenneth Ndumbe Ngale, Defendant and Appellant

No. 20180031

Appeal from the District Court of Cass County, East Central Judicial District, the Honorable Thomas R. Olson, Judge.
AFFIRMED.

Opinion of the Court by McEvers, Justice.

Mark R. Boening (argued), Assistant State's Attorney, and

Kimberlee J. Hegvik (on brief), Assistant State's Attorney, Fargo, ND, for plaintiff and appellee.

Luke T. Heck, Fargo, ND, for defendant and appellant.

State v. Ngale

No. 20180031

McEvers, Justice.

[¶1] Kenneth Ndumbe Ngale appeals from a judgment entered after he conditionally pled guilty to actual physical control of a motor vehicle. He argues the district court erred in denying his motion to suppress because he was seized and arrested by a person who was not a licensed law enforcement officer and did not have authority to investigate and arrest. We affirm.

I

[¶2] On January 7, 2017, Craig Keller, a volunteer reserve deputy for the Cass County Sheriff's Office, was on patrol and saw a running vehicle in the ditch with two male occupants. Keller stopped his squad car to conduct a motorist assist and to check on the occupants' welfare. Keller approached the vehicle and Ndumbe Ngale exited from the driver's door. After speaking to Ndumbe Ngale, Keller noted a strong odor of alcohol emanating from Ndumbe Ngale's breath, he had trouble keeping his balance, and he admitted he consumed alcohol earlier that evening. Keller contacted dispatch to request assistance and Cass County Sheriff's Deputy Chad Thompson arrived at the scene. Keller administered three field

HB/459
1/29/2019
#2

sobriety tests, two of which Ndumbe Ngale failed. Keller asked Ndumbe Ngale to submit to a preliminary breath test. Keller testified Ndumbe Ngale initially attempted to "trick" the machine by giving a partial breath and then pretending to blow, and he was unable to obtain an adequate sample. Deputy Thompson then advised Keller to attempt another test using the manual capture technique. Keller administered the preliminary breath test again, and the test indicated a blood alcohol concentration of 0.118 percent. Keller arrested Ndumbe Ngale for actual physical control of a motor vehicle. Ndumbe Ngale was transported to the Cass County Jail. At the jail, Deputy Thompson requested Ndumbe Ngale submit to a chemical test and Ndumbe Ngale refused. Ndumbe Ngale was charged with actual physical control of a motor vehicle and refusal to submit to a chemical test.

[¶3] Ndumbe Ngale moved to suppress all evidence obtained after his seizure. He claimed the seizure was unlawful because Keller is an unlicensed peace officer with no field sobriety training, an individual may not perform peace officer duties without a license under state law, and Keller lacked probable cause to arrest him based on Keller's lack of DUI detection and field sobriety training. The State opposed the motion.

[¶4] After a hearing, the district court denied Ndumbe Ngale's motion. The court found Keller is a reserve deputy, as a reserve deputy Keller is exempt from statutory licensing requirements, and Keller had probable cause to arrest Ndumbe Ngale for actual physical control.

[¶5] Ndumbe Ngale conditionally pled guilty to the charge of actual physical control, and reserved the right to appeal the court's decision denying his motion to suppress. The charge of refusal to submit to chemical testing was dismissed.

II

[¶6] Ndumbe Ngale argues the district court erred by denying his motion to suppress. He claims N.D.C.C. § 12-63-02 requires a person performing peace officer law enforcement duties to be licensed, Keller is not a licensed law enforcement officer, and therefore Keller did not have authority to investigate and arrest him.

[¶7] The district court denied Ndumbe Ngale's motion to suppress. The court concluded the officer licensing requirement under N.D.C.C. § 12-63-02 does not apply in this case because Keller meets the exception under N.D.C.C. § 12-63-03(2) for reserve officers who are not salaried and have full arrest authority. The court found Keller is not formally trained in DUI investigations, but evidence established he is competent and authorized to conduct an investigation. The court concluded Keller is not a special deputy because he does not meet the requirements for a special deputy under N.D.C.C. § 11-15-02, and he is a reserve deputy exempt from the licensing requirement under N.D.C.C. § 12-63-03(2). The court also rejected Ndumbe Ngale's arguments that Keller failed to satisfy the Cass County Sheriff's Office Reserve Unit minimum requirements as specified on the sheriff's office website. The court said the website does not show what the requirements were when

HB1459
1/29/2019
#2

Keller was sworn into the reserve unit, and there was no evidence he did not then meet the requirements for the reserve unit.

[¶8] In reviewing a district court's decision on a motion to suppress, this Court gives deference to the district court's findings of fact and resolves conflicts in testimony in favor of affirmance. State v. Broom, 2018 ND 135, ¶6, 911 N.W.2d 895. The court's findings of fact will not be reversed on appeal if there is sufficient competent evidence fairly capable of supporting the findings. Id. Questions of law are fully reviewable, and whether a finding of fact meets a legal standard is a question of law. Id.

[¶9] Chapter 12-63, N.D.C.C., governs peace officer training and licensing. Section 12-63-02, N.D.C.C., states, "An individual may not perform peace officer law enforcement duties in this state unless the individual is licensed as required in this chapter." A "peace officer" is "a public servant authorized by law or by government agency or branch to enforce the law and to conduct or engage in investigations of violations of the law." N.D.C.C. § 12-63-01(3). Section 12-63-03, N.D.C.C., provides exceptions to the licensing requirement, stating:

This chapter does not prevent or restrict the practice of peace officer duties or activities of:

1. Auxiliary personnel such as members of organized groups for purposes such as posse, search and rescue, and security at dances, if the group operates as adjunct to the police or sheriff's department, and does not have arrest powers or peace officer authority delegated to its members by the department.
2. A reserve officer such as an individual used by a municipal, county, or state law enforcement agency to provide services to that jurisdiction on a nonsalaried basis and who is granted full arrest authority.

[¶10] The primary objective in interpreting statutes is to determine legislative intent, as that intent is expressed in the language of the statute. State v. Brown, 2018 ND 31, ¶18, 906 N.W.2d 120. Words in a statute are given their plain, ordinary, and commonly understood meaning, unless contrary intention plainly appears. N.D.C.C. § 1-02-02; *see also* Brown, at ¶18. "Whenever a general provision in a statute is in conflict with a special provision in the same or in another statute, the two must be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision must prevail and must be construed as an exception to the general provision[.]" N.D.C.C. § 1-02-07.

[¶11] Section 12-63-02, N.D.C.C., requires individuals performing peace officer law enforcement duties to be licensed; however, N.D.C.C. § 12-63-03 provides exceptions to the licensing requirement, including stating the chapter does not prevent or restrict the peace officer duties of reserve officers. Under the plain language of N.D.C.C. § 12-63-03, an individual who is a reserve officer is not required to be licensed in this state to perform peace officer law

HB1459
1/29/2019
#2

enforcement duties. Section 12-63-03(2), N.D.C.C., defines a "reserve officer" to include an individual used by a municipal, county, or state law enforcement agency to provide services to that jurisdiction on a non-salaried basis and who is granted full arrest authority. "Non-" means "not, other than, reverse of, absence of." *Merriam-Webster's Collegiate Dictionary* 841 (11th ed. 2005). "Salaried" means "fixed compensation paid regularly for services." *Id.* at 1097. Reading the provisions of N.D.C.C. ch. 12-63 together and giving the words in the statutes their commonly understood meaning, we conclude a county sheriff's reserve deputy who does not receive fixed compensation paid regularly for services and has full arrest authority is not required to be licensed under N.D.C.C. ch. 12-63.

[¶12] The district court found Keller is a reserve deputy as defined by N.D.C.C. § 12-63-03(2), and the evidence supports the court's findings. Keller testified he is a reserve deputy for the Cass County Sheriff's Office and he is FRT trained and is certified to go out on the road to patrol like a full-time deputy. He testified he became a reserve deputy after completing the citizen's academy, completing background and psychological exams, completing FRT training, patrolling with a field training officer, and attending continuing education to meet the same standards as full-time deputies. He testified he is locally trained on the administration of standard field sobriety tests, including the horizontal gaze nystagmus (HGN), the walk-and-turn, and the one-legged-stand. He testified he was trained to administer the Alco-Sensor preliminary breath test. He testified he was sworn in as a reserve deputy and he is deputized to perform all of the same functions as full-time deputies. He testified that he is a volunteer and that he does not get paid. He testified he has his own uniform and badge, and he patrols in a patrol vehicle assigned for reserve deputy use. Keller testified that he has been working as a reserve deputy for almost three years and that he patrols once a week for about 8 hours at a time. He testified he is not accompanied by a licensed officer when he patrols and he is on his own like a full-time deputy. The evidence supports the district court's findings that Keller is a reserve officer used by the Cass County Sheriff's Office to provide services on a non-salaried basis and he has full arrest authority.

[¶13] Ndumbe Ngale argues Keller must meet the requirements for special deputies under N.D.C.C. § 11-15-02 to be exempt from licensing requirements under N.D.C.C. § 12-63-03(2). He claims a sheriff only has authority to appoint special deputies and there is no other statute or authority that supports the sheriff having authority to appoint volunteer reserve deputies. He contends Keller does not meet the requirements for a special deputy because he is a volunteer and is not compensated for his services.

[¶14] A sheriff has authority to appoint special deputies under N.D.C.C. § 11-15-02, which provides:

The sheriff may appoint and qualify special deputies in such numbers as are required by the conditions. Each special deputy shall receive compensation for services rendered and the same mileage allowance as regular deputies, which must be paid by the county within the

HB 1459
1/29/2019
#2

limits of funds budgeted for such purpose. The sheriff shall have the sole power of appointing special deputies and may remove them at pleasure.

This Court has previously held "a special deputy is one who is appointed by the sheriff to exercise special functions for the purpose of either assisting the sheriff or other deputies when they are in need, or acting in their place when they are unavailable." *State v. Beilke*, 489 N.W.2d 589, 592 (N.D. 1992). In *Beilke*, at 594, this Court held a sheriff may appoint a municipal police officer as a permanent "special deputy" under N.D.C.C. § 11-15-02 to act when regular deputies are unavailable or understaffed, noting a sheriff may not always be able to provide adequate law enforcement services in large and sparsely populated rural counties without the aid of municipal police officers. This Court has not addressed whether a special deputy is exempt from licensing requirements under N.D.C.C. § 12-63-03, and we need not address that issue in this case.

[¶15] The State agrees Keller does not serve as a "special deputy" as defined by N.D.C.C. § 11-15-02. Keller is not a special deputy; rather, he is a reserve deputy. A county sheriff has the authority to appoint reserve deputies in addition to special deputies. Under N.D.C.C. § 11-15-03(5), a sheriff has the authority to "[c]ommand the aid of as many inhabitants of the county as the sheriff may think necessary in the execution of the sheriff's duties." Section 12-63-03(2), N.D.C.C., states reserve officers include individuals used by a county law enforcement agency to provide services to that jurisdiction on a non-salaried basis. When construed together, we conclude those statutes authorize the sheriff to appoint reserve deputies. Keller meets the statutory definition of a reserve officer and he is not required to satisfy the requirements for special deputies under N.D.C.C. § 11-15-02 to be exempt from licensing requirements.

[¶16] Ndumbe Ngale argues Keller's qualifications and duties do not satisfy the Cass County Sheriff Reserve Program's minimum requirements to be a reserve deputy. He claims the reserve program's website states each reserve deputy applicant must complete a course of study accredited by the North Dakota Peace Officer Standards and Training Board, but there was no evidence Keller completed a course. However, there is no evidence in the record of the reserve program's minimum requirements at the time Keller was sworn in as a reserve deputy. The defendant has the initial burden of establishing a prima facie case the evidence he wants suppressed was illegally seized. *State v. Williams*, 2016 ND 132, ¶8, 881 N.W.2d 618. Evidence established that Keller was sworn in as a reserve deputy and that he has been a reserve deputy for approximately three years. Ndumbe Ngale did not present any evidence showing what the minimum requirements were when Keller was sworn in as a reserve deputy and that Keller did not meet those requirements. He also did not present any evidence that Keller does not meet the current requirements.

[¶17] Evidence established Keller is a "reserve officer" under N.D.C.C. § 12-63-03(2), and therefore he is exempt from statutory licensing requirements. Keller had authority to investigate and arrest Ndumbe Ngale. The arrest was supported by probable cause. The

evidence supports the district court's findings, and we conclude the district court did not err in denying Ndumbe Ngale's motion to suppress.

HB1459
1/29/2019
#2

[¶18] Ndumbe Ngale argues that a reserve officer should be limited to a secondary role, because reserves are not fully trained as licensed peace officers. Although this argument may have some merit, it is more appropriately addressed to the legislature, not the judiciary. "This Court's function is to interpret the statute as written by the legislature, and '[t]he justice, wisdom, necessity, utility and expediency of legislation are questions for legislative, and not for judicial determination.'" *In re Mangelsen*, 2014 ND 31, ¶19, 843 N.W.2d 8 (citations omitted).

III

[¶19] It is unnecessary to address other arguments made by Ndumbe Ngale because they are either unnecessary to our decision or are without merit. We affirm the judgment.

[¶20]

Lisa Fair McEvers
Daniel J. Crothers
Jerod E. Tufte
Jon J. Jensen
Gerald W. VandeWalle, C.J.

[Top](#) [Home](#) [Opinions](#) [Search](#) [Index](#) [Lawyers](#) [Rules](#) [Research](#) [Courts](#) [Calendar](#) [Comments](#)

Testimony before the House Committee on HB 1459

- First, I would like to thank the members of the Committee for your service to the citizens of ND. I suspect it must be a daunting task and I do appreciate your time this morning.
- On behalf of our agency I do have some concerns as to the ramifications that HB 1459 may have on not only our operations, but that of other smaller counties in ND. Specifically, in our situation, Sheriff KERZMANN in association with the Tribal Law Enforcement and Elders of the Three Affiliated Tribes (Mandan, Hidatsa, and Arikara) have developed and implemented Memos of Understanding where we have come to rely on MHA Drug Enforcement Administration officers who act as reserve officers in our organization as needed. These are highly trained and capable law enforcement officers that are not licensed as ND Peace Officers under the provisions of the POST Board. Being a rural county with the multi-jurisdictional complexities that exist where approximately ¼ of the geographical area of our county is shared with a sovereign entity, we have come to rely on their unique expertise and assistance. And we have residents of both cultures living mutually in the county and on the sovereign entity alike. This is not a unique situation in ND regarding personnel. In most rural counties, agencies rely on a variety of former or retired law enforcement officers; and in some instances, current / former / or retired military personnel to assist in a variety of roles.
- Though the standards set forth by ND law do not require reserve officers to have the same level of training or certification as regular officers, the people who fulfill these roles come from backgrounds that complement their activities. Every Sheriff or Police Chief that I have known over my 38-years of service who have implemented reserve personnel, have done so diligently. In most instances, the person is an active and known member of the communities in which they serve. They are selected by the administration of the agency involved, generally following appropriate background checks and training to ensure their competency.
- Removing the option of these smaller agencies to implement reserve officers as the administration finds necessary could greatly restrict their abilities to provide sufficient protection and service to the citizens they represent.
- Another consideration, is ND now allows most citizens the right to carry a concealed firearm in most locations throughout the state, but we would restrict a person wearing a badge of authority, as sworn and extended by the Chief Law Enforcement Officer of that jurisdiction, the right to carry a firearm as needed or to exercise the authority of arrest.
- Much autonomy has been extended to Sheriff's and Police Departments in the past for their auxiliary personnel implementations. I know we take that role very seriously and anticipate our fellow agencies do as well.
- Thank you for your time and consideration this morning. Can I entertain any questions?

Lieutenant Rick RICHARD, McLean County Sheriff's Department
Operations Commander / Training Coordinator

19.1074.01003
Title.

Prepared by the Legislative Council staff for
Representative M. Johnson
February 4, 2019

#1
HB1459
2-5-19
pg 1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1459

Page 1, line 1, after "reenact" insert "subsection 2 of section 12-63-01 and"

Page 1, line 2, after "to" insert "the definition of a part-time peace officer and"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Subsection 2 of section 12-63-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Part-time peace officer license" means a license issued to an individual authorized by law or appointed by a criminal justice agency of this state on a salaried ~~or~~ nonsalaried, or volunteer basis to enforce the law and to conduct or engage in investigations of violations of the law for no more than an average of twenty hours per week, not including time spent on call when no call to active duty is received, calculated on an annual basis."

Renumber accordingly



www.casscountynd.gov

Office of the Sheriff

Jesse Jahner, Sheriff

#2
HB1459
2-5-19

January 4, 2019

Response to Rob Port Blog regarding Reserve Officers,

On January 3rd 2019 there was an article written in reference to law enforcement agencies routinely using unlicensed, unregulated officers for law enforcement purposes. In that article, the Cass County Sheriff's Office is referenced. As the newly elected Cass County Sheriff, I feel that it is essential that the Cass County Sheriff's Office remains transparent and educates our citizens on all the public safety services our office provides along with the professionalism and integrity our office adheres to. In reading the article, I believe it is important to clarify how we currently utilize our Sheriff's Reserve Unit. The Cass County Sheriff's Office Reserve Unit is currently comprised of fifteen (15) volunteer uniformed sworn deputies who serve under the authority of the Cass County Sheriff. The primary function of the Sheriff's Reserve Unit is to assist in maintaining public safety which could include working special events such as street dances, the Red River Valley Fair, parades, traffic control, and other activities as assigned. They also participate in community outreach events such as Cops and Kids, Hometown Heroes, Night to Unite and many others. A select few are authorized to supplement our patrol division by attaining enough training hours to provide patrol functions. In addition, the Sheriff's Reserve Program is fiscally responsible and saves the citizens of Cass County tax payer dollars.

The selection process for those wanting to apply is very rigorous. The Cass County Sheriff's Office conducts a criminal record prescreening before any applicant would be eligible for an interview. The remaining applicants then participate in an interview process. If selected after the interview process, the applicant would then go through a full background investigation to include fingerprinting, a polygraph examination, a psychological examination, a drug screening, a credit history check and reference checks. Here is an example of our vetting process; In 2017-2018 there were thirty-five (35) applicants in which ten were eliminated through the criminal pre-screening process. Fourteen (14) were offered interviews. From those fourteen (14), seven (7) were selected and progressed to the full background investigation. Upon conclusion of the background investigation, three were selected into the reserve unit. In our current selection process twenty-eight (28) there were applicants, eighteen (18) were offered interviews thirteen (13) were selected and to date five (5) have successfully completed the background portion. Four (4) are still pending completion of their background investigations. Those Reserve Deputies who don't conform themselves to the standards and expectations of the Cass County Sheriff's Office may be suspended or dismissed from the Reserve Program at any time.

Once a Reserve Deputy is selected they must attend approximately 103 hours of training in the first year before becoming deputized. Some of the training each Reserve Deputy attends is North Dakota POST (Peace Officer Standards and Training) approved and instructed by an approved North Dakota Peace Officer Instructor. Those instructors have attended an approved Methods of Instruction Course regulated by the North Dakota POST Board. After the first year of training, a Reserve Deputy receives an additional 50 hours of training each year while enrolled in the program. All training records are maintained by the Cass County Sheriff's Office.

Before a Reserve Deputy is authorized to work patrol shifts, they need to have completed 425 hours of training to include working with a Field Training Officer, which is a full time licensed patrol deputy. Once they have completed this training, they are Field Readiness Trained (FRT) and can assist in working patrol functions. Some of this training includes but is not limited to use of force training, OC (pepper spray) training, taser training, defensive driving training, standard field sobriety testing training, CPR/AED training, firearms qualification/certifications, evidence processing, criminal and traffic law training, and suicide awareness training to name a few.

As stated above, The Cass County Sheriff's Office will always strive to maintain a high level of public safety, integrity, professionalism, transparency and training. My goal is to provide the best public service to our citizens with the amount of resources available. Anyone with additional questions in reference to our Reserve Program can contact the Cass County Sheriff's Office for additional information.

Jesse Jahner
Cass County Sheriff

Cass County Sheriff
Law Enforcement Center
1612 23rd Avenue North
P.O. Box 488

Fargo, North Dakota 58107-0488
Phone: 701-241-5800
Fax: 701-241-5806

Cass County Sheriff
Courthouse

211 9th Street South
P.O. Box 488
Fargo, North Dakota 58107-0488
Phone: 701-241-5800
Fax: 701-241-5805

Cass County Jail
450 34th Street South
Fargo, North Dakota 58103
Phone: 701-271-2900
Fax: 701-271-2967

HB 1459
2/5/2019
#2

2017 calculated at new Patrol Deputy hourly rate of \$22.28/hour

Total hours worked by 25 SRU: 5,524 hours worth \$159,997

Events that were worked:

- Arthur's Barn
- Fargodome events (money room) such as:
 - Concerts
 - NDSU Football
 - Monster Jam (monster trucks)
 - Rib Fest
- RRVF
 - The Fair
 - PGI Fireworks Show
 - World of Outlaws at RRVF
 - Wedding dances
 - Banquets
- High School Prom dances
- Cyclothon
- Marathon (none uniformed. Help direct the runners through the course)
- Safety Safari at RR Zoo
- Street Dances
 - Davenport
 - Page
 - Arthur
 - Casselton
 - Kindred
 - Mapleton
 - Horace
 - Leonard
- Night To Unite
 - West Fargo
 - Casselton
 - Mapleton
 - Buffalo
- Bonanzaville Parade
- Holiday Basket Deliveries in Mapleton, Kindred and Horace areas
- Tip-a-Cop fund raiser for Special Olympics fundraiser
- Football homecoming games
 - Casselton
 - Northern Cass
- Various wedding dances at venues in the towns in the county.
- Cops and Kids (shop with a Cop)

HB1459
2/5/2019
#2

2018 calculated at the new Patrol Deputy rate of \$23.06/hour

Total hours worked thus far by 15 SRU (we lost 10 from last year): 3,146 hours worth \$99,226

- Fargodome events (money room) such as:
 - Concerts
 - NDSU Football
 - Monster Jam (monster trucks)
 - Rib Fest
- Fargo Airshow
- RRVF
 - The Fair
 - World of Outlaws at RRVF
 - Thrive Fest
 - Wedding dances
 - Banquets
- High School Prom dances
- Cyclothon
- Marathon (none uniformed. Help direct the runners through the course)
- Safety Safari at RR Zoo
- Street Dances
 - Davenport
 - Page
 - Arthur
 - Casselton
 - Kindred
 - Mapleton
 - Horace
 - Leonard
- Night To Unite
 - West Fargo
 - Casselton
 - Mapleton
 - Buffalo
- Bonanzaville Parade
- Holiday Basket Deliveries in Mapleton, Kindred and Horace areas
- Tip-a-Cop fund raiser for Special Olympics fundraiser
- Football homecoming games
 - Casselton
 - Northern Cass
- Various wedding dances at venues in the towns in the county.
- Cops and Kids (Shop with a Cop)

HB 1459
2/5/2019
#2



SHERIFF
CASS COUNTY

911

2019 Sheriff's Reserve Unit Training Schedule

2019 Sheriff's Reserve Unit Training Schedule							
Date	Group	Hours	Time	Topic	Instructor	Location	Notes
12/4/2018	SRU 1	1	1800-1900	SRU Orientation/Introduction	Sgt. Jade Van Den Einde	CCLEC - West Classroom	
	SRU 1	2	1900-2100	Interpersonal Communication	Lt. Amanda Henrickson		
	SRU 1	1	2100-2200	Pat-down Searches	Dep. Zach Gruba		
	FRT/Future	2	1800-2000	Officer/Violator Relations	Cpl. Keenan Zundel	CCLEC - East Classroom	
	FRT/Future	2	2000-2200	Fake IDs / DUI Checkpoints	Cpl. Keenan Zundel		
12/4/2018	SRU 2 & 3	4	1300-2100	Open Shoot	Firearms Instructors	F.R.T.C. Range	Optional Shoot
12/11/2018	ALL (who need)	4	1800-2200	CPR / AED (Healthcare Provider)	FM Ambulance	FM Ambulance HQ	Certification and Refresher
12/18/2018	SRU 1	2.5	1800-2030	NCIC Class	Dep. Kathryn Allen	CCLEC - West Classroom	
	SRU 1	1.5	2030-2200	Take Defensive Driving Online Course Online	Online	Complete at home online	
12/18/2018	SRU 2 & 3	4	0800-1600	Open Shoot	Firearms Instructors	F.R.T.C. Range	Optional Shoot (last of the year!)
1/2/2019	SRU 1	4	1800-2200	OC Spray (initial and refresher)	Sgt. Sam Hernandez	Jail Training Room	Extra clothes and a ride home recommended
1/8/2019	All	4	1800-2200	Crime Scene Processing/Report Writing	Det. Joe Gress	CCLEC - West Classroom	
1/8/2019	SRU 2 & 3	4	1700-2100	Open Shoot	Firearms Instructors	F.R.T.C. Range	Optional Shoot
1/15/2019	SRU 1	2	1800-2000	Suicide Awareness	Lynette Orth	CCLEC - West Classroom	
	SRU 1	2	2000-2200	Equipment Overview/Vehicles	Deputy JJ Koerber		
	FRT/Future	4	1800-2200	Domestic Violence / Elder & Child Abuse / Sex Assault	Sgt. Steve Gabrielson	CCLEC - East Classroom	
1/22/2019	SRU 1	4	1800-2200	Taser Certification - part 1	Sgt. Kevorkian	CCLEC - West Classroom	
	FRT/Future	4	1800-2200	New World Training/TraCS E-Tickets/Patrol Logs	Sgt. Jade Van Den Einde	CCLEC - East Classroom	
1/29/2019	SRU 1	4	1800-2200	Taser Certification - Part 2	Sgt. Kris Kevorkian	CCLEC - West Classroom	
2/5/2019	SRU 1	4	1800-2200	Jail Orientation/Tour	Jail Corporal	Cass County Jail	
	All (who need)	4	1800	Taser Recertification	Sgt. Kris Kevorkian	CCLEC West Classroom	
2/5/2019	SRU 2 & 3	8	1300-2100	1st Quarter Shoot	Firearms Instructors	F.R.T.C. Range	pick one date unless permission given
2/6/2019	SRU 2 & 3	8	0800-1600	1st Quarter Shoot	Firearms Instructors	F.R.T.C. Range	pick one date unless permission given
	Group	Hours	Time	Topic	Instructor	Location	Notes
2/12/2019	SRU 1	4	1800-2200	Use of Force/Firearms Safety/Range Orientation	Cpl. Jeff Olson	F.R.T.C. Range	Training Is in the classroom
2/12/2019	SRU 2 & 3	8	1300-2100	1st Quarter Shoot	Firearms Instructors	F.R.T.C. Range	pick one date unless permission given
2/14/2019	SRU 2 & 3	8	0800-1600	1st Quarter Shoot	Firearms Instructors	F.R.T.C. Range	pick one date unless permission given
2/19/2019	All (who need)	4	1800-2200	Force on Force/Ground Escapes/Edge Weapons	Sgt. Tommy Ray	CCLEC Gymnasium	Physical Activity - But no shorts.
2/26/2019	SRU 1	4	1800-2200	Handgun Manipulation	Cpt. Jesse Jahner	F.R.T.C. Range	Bring Duty Belt
3/5/2019	All	4	1800-2200	Room Clearing	Cpt. Jesse Jahner	CCLEC	Bring Duty Belt
3/11/2019	All	4	1300-2100	Open Shoot	Firearms Instructors	F.R.T.C. Range	Optional Shoot
3/12/2019	All	4	1800-2200	Tactical Handcuffing /Controlled Holds	Sgt. Tommy Ray	CCLEC Gymnasium	Physical Activity - But no shorts.
	FRT/Future	2	1800-2000	Maps/Radio/10 Code/Phonetic Code & Orientation	Sgt. Jade Van Den Einde	CCLEC - East Classroom	
3/19/2019	All	4	1800-2200	Active Shooter	Cpt. Jesse Jahner	CCLEC	bring duty belt
3/26/2019	SRU 1 & FRT	3	1800-2200	Evidence Processing	Cpl. Kelly Perez	CCLEC - East Classroom	
4/2/2019	SRU 1	3	1800-2100	SRU 1 Handgun Shoot Training	Firearms Instructors	F.R.T.C. Range	
	SRU 2 & 3	4	1800-2200	Tactical Approach/Entry	Cpt. Jesse Jahner	CCLEC West Classroom	
4/9/2019	SRU 1	3	1800-2100	SRU 1 Handgun Shoot Training	Firearms Instructors	F.R.T.C. Range	
	FRT/Future	4	1800-2200	SFSTs - Part 1	Cpl. Keenan Zundel & Dep. Chad Thompson	CCLEC - West Classroom	
4/16/2019	SRU 1	4	1800-2200	Baton Training	Sgt. Tommy Ray	CCLEC - Gym	Physical Activity - But no shorts.
	FRT/Future	4	1800-2200	SFSTs - Part 2	Cpl. Keenan Zundel & Dep. Chad Thompson	CCLEC - West Classroom	
4/22/2019	All	4	1300-2100	Open Shoot	Firearms Instructors	F.R.T.C. Range	Optional Shoot
4/23/2019	SRU 1	3	1800-2100	SRU 1 Handgun Shoot Training	Firearms Instructors	F.R.T.C. Range	
	FRT/Future	4	1800-2200	SFSTs - Part 3	Cpl. Keenan Zundel & Dep. Chad Thompson	CCLEC - West Classroom	

HB1459
2/5/2019 #2

	Group	Hours	Time	Topic	Instructor	Location	Notes
4/30/2019				OPEN			
	FRT/Future	4	1800-2200	SFSTs - Part 3	Cpl. Keenan Zundel & Dep. Chad Thompson	CCLEC - West Classroom	
5/7/2019	SRU 1	4	1800-2200	SRU 1 Handgun Shoot Training	Firearms Instructors	F.R.T.C. Range	
	FRT/Future	4	1800-2200	SFSTs - Part 4	Cpl. Keenan Zundel & Dep. Chad Thompson	CCLEC - West Classroom	
5/13/2019	All	8	1300-2100	2nd Quarter Shoot	Firearms Instructors	F.R.T.C. Range	pick one date unless permission given
5/14/2019	FRT/Future	4	1800-2200	SFSTs - Testing Subjects - Final	Cpl. Keenan Zundel & Dep. Chad Thompson	CCLEC - West Classroom	
5/15/2019	All	8	0800-1600	2nd Quarter Shoot	Firearms Instructors	F.R.T.C. Range	pick one date unless permission given
5/21/2019	SRU 1	4	1800-2200	Dispatch Presentation	RRRDC Dispatcher	Dispatch	go to: 300 NP Ave. #206, Fargo
	FRT/Future	4	1800-2200	Felony Traffic Stops	Cpt. Jesse Jahner	CCLEC	Plan for outdoor training
5/21/2019	All	8	1300-2100	2nd Quarter Shoot	Firearms Instructors	F.R.T.C. Range	pick one date unless permission given
5/23/2019	All	8	0800-1600	2nd Quarter Shoot	Firearms Instructors	F.R.T.C. Range	pick one date unless permission given
5/28/2019	All	4	1800-2200	Criminal and Traffic Law	States Attorneys	CCLEC	take notes
6/4/2019	All	2.5	1800-2030	Frequently Used Statutes	Det. Chad Thompson	CCLEC - East Classroom	
	SRU 1	1	1800-1900	PBT /Manual Traffic Control/Radio/Reports	Sgt. Jade Van Den Einde	CCLEC - East Classroom	
	FRT/Future	4	1800-2200	Mock Crashes/TraCS crash reports	Sgt. Tony Krogh/Dep. Mathew King	CCLEC - West Classroom	
6/10/2019	All	8	1300-2100	Open Shoot	Firearms Instructors	F.R.T.C. Range	Optional Shoot - Mandatory for SRU 1
6/11/2019	All	4	1800-2200	Defensive Tactics Refresher	Sgt. Tommy Ray	CCLEC Gymnasium	Physical Activity - But no shorts.
6/18/2019	All	4	1800-2200	OPEN			
7/2/2019	All	2	1800-2000	SRU Meeting	Sgt. Van Den Einde	CCLEC	Pre-Fair Meeting
	Group	Hours	Time	Topic	Instructor	Location	Notes
7/8/2019	All	8	1300-2100	State Qualification Shoot	Firearms Instructors	F.R.T.C. Range	pick one date unless permission given
7/10/2019	All	8	0800-1600	State Qualification Shoot	Firearms Instructors	F.R.T.C. Range	pick one date unless permission given
7/16/2019	All	8	1300-2100	State Qualification Shoot	Firearms Instructors	F.R.T.C. Range	pick one date unless permission given
7/18/2019	All	8	0800-1600	State Qualification Shoot	Firearms Instructors	F.R.T.C. Range	pick one date unless permission given
	All	8	1300-2100	Open Shoot	Firearms Instructors	F.R.T.C. Range	Optional Shoot
	All	8	1300-2100	3rd Quarter Shoot	Firearms Instructors	F.R.T.C. Range	pick one date unless permission given
	All	8	0800-1600	3rd Quarter Shoot	Firearms Instructors	F.R.T.C. Range	pick one date unless permission given
	All	8	1300-2100	3rd Quarter Shoot	Firearms Instructors	F.R.T.C. Range	pick one date unless permission given
	All	8	0800-1600	3rd Quarter Shoot	Firearms Instructors	F.R.T.C. Range	pick one date unless permission given
	All	8	1300-2100	Open Shoot	Firearms Instructors	F.R.T.C. Range	Optional Shoot
11/4/2019	All	8	1300-2100	4th Quarter Shoot	Firearms Instructors	F.R.T.C. Range	pick one date unless permission given
11/6/2019	All	8	0800-1600	4th Quarter Shoot	Firearms Instructors	F.R.T.C. Range	pick one date unless permission given
11/12/2019	All	8	1300-2100	4th Quarter Shoot	Firearms Instructors	F.R.T.C. Range	pick one date unless permission given
11/13/2019	All	8	0800-1600	4th Quarter Shoot	Firearms Instructors	F.R.T.C. Range	pick one date unless permission given
	All	8	1300-2100	Open Shoot	Firearms Instructors	F.R.T.C. Range	Optional Shoot

HB1459
2/5/2019
#3

Neutral Testimony of Executive Director Scott Davis or Designee
North Dakota Indian Affairs Commission

HB 1459 – Relating to Peace Officer Duties or Activities

House Judiciary Committee

Chairman, Representative Kim Koppelman

North Dakota State Capital, Bismarck ND

January 29, 2019

Chairman Koppelman and fellow members of the Committee,

Thank you for the opportunity to testify today. My name is Scott Davis and I serve as the Executive Director of North Dakota Indian Affairs Commission. In this role, I serve as a liaison between the leadership, people, and governments of North Dakota's State and Tribal governments. In this capacity, my role is to address issues ranging from education, economic development, law enforcement, jurisdictional issues, mutual aid agreements, child welfare and juvenile justice, transportation, and healthcare issues, among a long list of various other issues, as so many interface with the five Tribal Nations that share geography with North Dakota.

Of the major areas we deal in, the following are some of the biggest in our portfolio: law enforcement, jurisdictional considerations, and mutual aid agreements between State/Counties/and Tribe. Because of this, we heard very immediately from Sheriffs, and the States Attorneys who represent them, about HB 1459. We are testifying neutrally today because of the amount of work we do in this area and those we work very closely with, in order to give this esteemed Committee a little background on how this Bill relates to the work being done in rural counties and Tribal Nations, whose geography they share.

The Three Affiliated Tribes of North Dakota (MHA Nation), for instance, has their own Division of Drug Enforcement (MHA-DDE), wherein the services they provide include drug enforcement, the countering of narcotics, and human trafficking. The primary mission of MHA Division of Drug Enforcement (MHA-DDE) is to investigate, arrest, successfully prosecute and thus dismantle all narcotics trafficking/criminal enterprise/human trafficking organizations involved in the manufacturing, transportation, distribution, selling and use of all illegal drugs and/or the victimization of persons on or through the Fort Berthold Indian Reservation. Seizure of illegal drugs, cash and other assets associated with and supportive of the illicit drug trade; and to investigate, arrest, successfully prosecute, and dismantle all human trafficking and money laundering efforts which support these and other illegal activities. Their efforts in this role, are strictly limited to the MHA Nation.

Those who serve on MHA-DDE all have long careers in law enforcement before coming to the DDE. For instance, former FBI officers, as well as other federal officers and agents from various certified law enforcement backgrounds work on this Division, as the qualifications set by their lead, Chief White, have been set at a higher standard when compared to the qualifications and training we cross-checked across the State of North Dakota.

As a background to Chief Gerald White, he served most of his career as a drug enforcement federal agent, has created and been included in multiple national and state drug task forces, and has been federally licensed with credentials that exceed what are required by the POST Board of North Dakota.

McClean County Sheriff, Sheriff JR Kerzmann, has enlisted MHA-DDE as reserve officers for his reserve officer program, as McClean County, is a very rural area. With the help of MHA-DDE, Sheriff Kerzmann has relayed to our office that he can rely on MHA-DDE to be efficient and professional reserve officers. He has relayed to our office that because of MHA-DDE's expertise in drug activity work and human trafficking, they have helped in areas where it can be hard to find that expertise.

We have also received feedback relating to HB 1459 from Ladd Erickson, State's Attorney for several jurisdictions, but notably for this issue, the State's Attorney for McClean County. He has made sure to note that his Sheriff, Sheriff Kerzmann has cross-deputized MHA-DDE agents as McClean County "reserve or special deputies". Attorney Erickson has stated that these reserve agents have been a "tremendous asset" to McClean County and having them as special/reserve deputies has created a "seamless jurisdictional map with the Metro Area Narcotics Task Force which covers both Bismarck and Mandan, with McClean County in the middle with officers that have jurisdiction on MHA Nation (MHA-DDE), plus also McClean County special deputy status – all on a major drug pipeline in and out of the oil patch". According to Attorney Erickson, "McClean County has specifically tasked the MHA-DDE to both carry and use firearms based on the crimes they work on in joint drug investigations."

Attorney Erickson, North Dakota Indian Affairs Commission, McClean County Sheriff Kerzmann, and MHA Nation have also created, a mutual aid agreement that has now been in effect for over three years. In this agreement, McClean County and MHA Nation have a cross-jurisdictional means that allows either to engage in hot pursuit, detainment, among other important means that disallow criminals from "hiding out" on either side of their jurisdictions. McClean County Sheriff Kerzmann, along with his Lieutenant, Rick Richards, have stated to our office that "this mutual aid agreement relies on their reserve officers, due their rural location, and a smaller number of officers." It has been stated to our Office that "these reserve officers, McClean County, and the MHA Nation law enforcement (which included MHA-DDE), would be unable to collaborate", and "need one another to protect each of their jurisdictions' citizens and to protect each other."

As also explained to our office by Sheriff JR Kerzmann, reserve deputies for McClean County must go through an application process, which includes a criminal record prescreening, federal, state, and local background checks, as well as the training they must pass to become a member of their reserve program. Any reserve deputies who do not conform to the standards and expectations of McClean County Sheriff's Office shall be suspended or dismissed from McClean County's program at any time by Sheriff Kerzmann, as written in their policy.

HB1459
2/5/2019
#3

This concludes my testimony. Thank you, Chairman and members of the Committee. I will stand for any further questions.

Introduced by

Representatives M. Johnson, Boschee, Longmuir, Pyle

1 A BILL for an Act to amend and reenact section 12-63-03 of the North Dakota Century Code,
2 relating to peace officer duties or activities.

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

4 **SECTION 1. AMENDMENT.** Section 12-63-03 of the North Dakota Century Code is
5 amended and reenacted as follows:

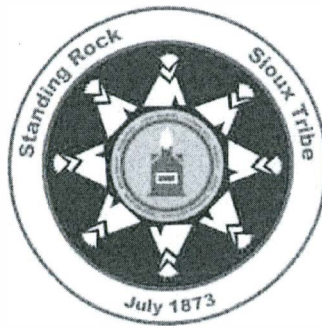
6 **12-63-03. Persons and practices not affected.**

7 This chapter does not prevent or restrict the practice of peace officer duties or activities of:

- 8 1. Auxiliary personnel such as members of organized groups for purposes such as
9 posse, search and rescue, and security at dances, if the ~~group~~ personnel operates as
10 adjunct to the police or sheriff's department, does not carry a firearm or concealed
11 weapon, and does not have arrest powers or peace officer authority ~~delegated to its~~
12 ~~members by the department~~.
- 13 2. ~~A reserve officer such as an individual used by a municipal, county, or state law~~
14 ~~enforcement agency to provide services to that jurisdiction on a nonsalaried basis and~~
15 ~~who is granted full arrest authority.~~
- 16 3. A person who provides private investigative services in this state.
- 17 4.3. A person doing private security work or any private security agency.
- 18 5.4. A person performing peace officer duties in an official capacity as a federal officer.

HB 1459
2/15/2019
#4

Mike Faith
Chairman



TRIBAL COUNCIL
(AT LARGE)

Paul Archambault

Frank White Bull

Courtney Yellow Fat

Kory McLaughlin

Charles Walker

Dana Yellow Fat

Ira Taken Alive
Vice Chairman

Susan Agard
Secretary

John Pretty Bear
Cammonball District

Brandon Mauai
Long Soldier District

Wayne Looking Back
Wakpala District

Delray Demery
Kenel District

Joe White Mountain Jr.
Bear Soldier District

Caroline Thompson
Rock Creek District

Verdell Bobtail Bear
Running Antelope District

Samuel B. Harrison
Porcupine District

January 31, 2019

Scott Davis, Executive Director
North Dakota Indian Affairs Commission
Indian Affairs Commission
600 E Boulevard Ave
Judicial Wing - Rm #117
Bismarck, ND 58505-0300

Re: HB 1459

Dear Mr. Davis:

I write to express the Tribe's opposition to HB 1459, the purpose of which is unclear. As you know, maintaining adequate law enforcement personnel is a challenge in many jurisdictions, including those counties on which Standing Rock is located. Erecting unnecessary hurdles, as HB 1459 purports to do, only exacerbates the challenge.

Please feel free to contact my office to discuss this matter further.

Sincerely,

Mike Faith, Chairman
Standing Rock Sioux Tribe