

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2340

2007 SENATE JUDICIARY

SB 2340

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2340**

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: January 29, 2007

Recorder Job Number: 2144 & 2146

Committee Clerk Signature

Maria L Solberg

Minutes: Relating to the civil commitment of sexually dangerous individuals.

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

Testimony In Support of Bill:

Sen. Layton Freborg, Dist. #8 Introduced the bill. Speaking of a personal case of cases in rural area not having the expertise as another counties attorney and a judge's opinion verses the Attorney General's office opinion.

Peter Welte, Pres. Of ND State Attorneys Assoc. (meter 3:19) Reviewed bill and gave testimony – Att. #1. Reviewed the characteristics of the current process. The process calls for uniformity the involvement of the Attorney Generals office would be consistent with other legislation.

Sen. Fiebiger asked (meter 5:06) what the downside of having the A.G.s office involved this bill? None. Mr. Welke spoke of there annual meeting last summer and the discussion of this bill. We currently are contacting John Byers in the A.G.'s office, upon receipt of our packets, and he usually has more information then we do.

Cynthia Fieland, Assistant at the Burleigh Co. States Attorney Office, In support of t bill (meter 7:43) This is a separate proceeding then the criminal proceeding. These are mental

health issues. The packets don't reflect any criminal acts. Spoke of process and the complexity of the packets and history of person. Intent is to centralize all of the information for the smaller jurisdictions to have access. Each individual county can maintain the jurisdiction if they choose. John Byers position is a very good access for information

Sen. Nothing questioned the title of the bill. (meter 11:30) Discussion of the A.G.'s FTE request. This has nothing to do with the criminal process, this bill is about the civil proceeding and the A.G.'s office to have the ability to send a letter to the county informing them of the claimant, volunteering to handle the case or allowing them to take the responsibility.

Sen. Fiebiger questioned (meter 13:00) Section III the Juvenile requirements. Are there special requirements to handle these in the A.G.'s office. The style of procedure and processes are the same, it is the location and treatment facility that are different.

Testimony in Opposition of the Bill:

None

Testimony Neutral to the Bill:

David Boek, State employee and lawyer for the Protection & Advocacy Project – Att. #2 and submitted amendment later Att. # 3

Senator David Nothing, Chairman closed the hearing.

Job Number: 2146

Sen. Lyson made the motion to Do Pass and **Sen. Olafson** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Nothing**

Senator David Nothing, Chairman closed the hearing

FISCAL NOTE
Requested by Legislative Council
03/12/2007

Amendment to: SB 2340

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			\$436,107		\$458,413	
Appropriations			\$436,107		\$458,413	

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).*

As amended, \$5,000 is appropriated for civil commitments of sexually dangerous individuals by the Office of Attorney General.

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.*

The fiscal impact includes funding for 2.5 FTE's and associated operating expenses needed to handle civil commitments of sexually dangerous individuals.

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.*

The estimated fiscal impact for the 2007-09 biennium is \$436,107 from the general fund. If the Attorney General is responsible for these civil commitments, \$436,107 is required to fund this responsibility.

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.*

The necessary general fund appropriation for these responsibilities is \$436,107. This amount was not in the Governor's budget.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3622	Date Prepared:	03/14/2007

FISCAL NOTE
Requested by Legislative Council
01/22/2007

Bill/Resolution No.: SB 2340

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).*

No fiscal impact 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.*

No fiscal impact anticipated

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.*

No fiscal impact anticipated

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.*

No fiscal impact anticipated

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.*

No fiscal impact anticipated

Name:	Dave Krabbenhoft	Agency:	DOCR
Phone Number:	328-6135	Date Prepared:	01/23/2007

Date: 1-29-07

Roll Call Vote # 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2340

Senate _____ Judiciary _____ Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Lyson Seconded By Sen. Olafson

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

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Nething

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

REPORT OF STANDING COMMITTEE (410)
January 29, 2007 1:23 p.m.

Module No: SR-19-1447
Carrier: Nething
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2340: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2340 was rereferred to the Appropriations Committee.

2007 SENATE APPROPRIATIONS

SB 2340

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2340

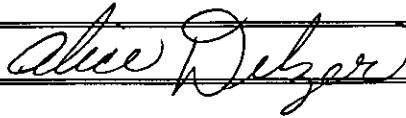
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 02-05-07

Recorder Job Number: 2824

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on SB 2340 at 11:15 am on February 5, 2007 relating to civil commitment of sexually dangerous offenders. He talked about the fiscal note and the appropriations requested.

Aaron Burse State's Attorneys Association presented written testimony (1) from Peter D Welte, President, North Dakota State's Attorneys Association and gave oral testimony in support of SB 2340. This bill is not in the Attorney General's requests. He talked about the request for 1 additional FTE, 1 paralegal and 1 secretary. This would save counties significant time for their criminal prosecutors to do other things.

Senator Grindberg asked what would happen if this bill didn't go through. How are we progressed for the next biennium and then do you have an opinion whether this is more important or a \$1 million for kiosks?

Aaron Burse said if this bill doesn't go through the States Attorneys will be required to do this. This bill only grants the Attorney General to also prosecute these cases. If the local office did not have the expertise or want to do the case then the Attorney General would do it.

Senator Mathern asked why any county would want to take on this expense. He was told not many counties do. Sometimes the local prosecutor may want more authority as he is an elected official in the county.

Cynthia Feland Assistant Burleigh County State's Attorney gave oral testimony in support of SB 2340. Highlights of her testimony was sharing about the hiring of a prosecutor, Jon Byers, to prosecute sex crimes in the Attorney General's office, mental health issues, repeat offenders, and civil commitments. Basically this bill would authorize the Attorney General's Office to do these civil commitment cases, again it doesn't take control away from the local jurisdiction. This bill would create a more centralized approach. She asked for a do pass.

Senator Grindberg asked if there is a plan for this bill, like the kiosks, or the bill concerning two forensic experts.

Cynthia Feland stated historically we have a number of offenses in the sex crimes arena. These people at some point kind of max out on the sentences that in the current law have been imposed on them. So we need to look at a review process. These kiosks are going to help with that. It is really one big circle that has a lot of pie pieces involved. They are all important, and more of the smaller jurisdictions are being asked to do these, they are very complex cases to do. In Burleigh County I did 11 of these last year Unfortunately these people are finishing a twenty year sentences, they are in that category of individuals that we need to consider them to be too significant a risk to be put back into the public setting. We have time frames we have to meet in order to go through this commitment process.

Senator Mathern asked if this initiative brought to the attention of the Attorney General regarding budget requests. He was told it was discussed with the Attorney General after their budget was done.

Ladd Erickson, McClean County State's Attorney gave oral testimony in support of SB 2340. He stated about a year ago in July Peter Welte and myself met with the Attorney General in Grand Forks to raise some specific concerns about his staffing. This is a concern because his office doesn't have time or staff to take the case, for example conflict of interest

cases that we now as State's Attorneys take for each other when there is embezzlement. We felt the public has more confidence if they see the Attorney General handles these types of cases. At the same time there is concern regarding the initial reference to the State Hospital regarding sexual predator commitments. He supports the bill. He stated one of the major issues is the way commitments are done to the State Hospital, needs to be a uniform system.

Tom Tremleth, Chief Deputy Attorney General gave oral testimony in support of bill. He stated everything that has been said so far as it reflects on the Attorney General and this bill is correct. We would intend to add staff to at least do what we have to do as what is expected in this bill. It is a serious public safety issue, especially in the rural counties where they don't have the adequate resources to do the job on some of these cases.

Senator Grindberg asked if we have any statistics that would show the level of activity in each of the counties. He thought the larger the county there would be more cases.

Senator Mathern asked about counties sharing these cases. He was told there is nothing in the law to prevent that. Senator Mathern asked are there people more skilled in Burleigh or Cass County that would be hired here.

Tom Tremleth said his suggestion is that if we hired someone that was equal to the skill level provided in Burleigh or Cass County we would be well prepared.

Chairman Holmberg stated there is a series of bills that impact the Attorney General's Office. The same subcommittee will be looking at this bill. He listed the forensic examiners, the kiosks, questions about the Attorney General's budget and a slight decrease in FTE's.

The hearing was closed on SB 2340.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2340

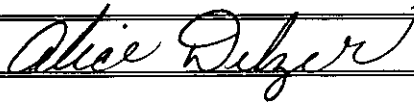
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 02-09-07

Recorder Job Number: 3334

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on SB 2340 on February 9, 2007 regarding Civil Commitment Sexually Dangerous Individuals. He talked about the bill, stating that the Attorney General's office (AG) is looking at appropriations for a training program for States Attorneys in the smaller counties.

Senator Christmann stated he thought the smaller counties needed assistance in this matter.

Senator Mathern stated being a member of the subcommittee on the AG bill, I am under the understanding that they already do help the smaller counties. In fact, I don't think the AG turns anyone down.

Senator Wardner moved a DO NOT PASS, Seconded by Senator Kilzer. Discussion followed.

Senator Lindaas isn't that the call of the local State's Attorney?

Chairman Holmberg stated they are the ones who determine whether or not they are going to go for civil commitment. Either keeping or killing the bill won't change that.

A roll call was taken on a DO NOT PASS resulting in 10 yeas, 2 nays, 2 absent. The motion carried.

The hearing on SB 2340 closed.

Date: 2/9/07
Roll Call Vote #:

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2340

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

do not pass

Motion Made By

Wardner

Seconded By

Kilzer

Senators	Yes	No	Senators	Yes	No
Senator Ray Holmberg, Chrm	✓		Senator Aaron Krauter		
Senator Bill Bowman, V Chrm	✓		Senator Elroy N. Lindaas	✓	
Senator Tony Grindberg, V Chrm	✓		Senator Tim Mathern	✓	
Senator Randel Christmann		✓	Senator Larry J. Robinson	✓	
Senator Tom Fischer	✓		Senator Tom Seymour		✓
Senator Ralph L. Kilzer	✓		Senator Harvey Tallackson		
Senator Karen K. Krebsbach	✓				
Senator Rich Wardner	✓				

Total (Yes) 10 No 2

Absent 2

Floor Assignment Sen Mathern

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

REPORT OF STANDING COMMITTEE (410)
February 12, 2007 9:11 a.m.

Module No: SR-29-2835
Carrier: Mathern
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2340: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO NOT PASS** (10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). SB 2340 was placed on the Eleventh order on the calendar.

2007 HOUSE JUDICIARY

SB 2340

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2340

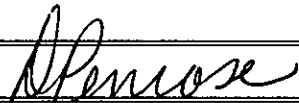
House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/6/07

Recorder Job Number: 4456

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2340.

Jerod Tufte, Kidder County State's Attorney: Support. I am a state's attorney for one of our small counties. One of the issues that we face with these sex offender commitments is that they don't come up very often in our small counties. This bill addresses the problem that we have, it gives us additional resources, expertise from the AG's office that we can rely on, and still gives us small county state's attorneys the option to proceed if we want to. We have the first option for 10 days, and then it goes to the AG's office and we still maintain the option to proceed if they decide not to. I happen to be handling one of these right now; with any luck we won't have another one for several years in my county. I have spoken, in the course of dealing with this one, with a number of my colleagues in large and small counties across the state. I can't speak on behalf of everyone because I haven't spoken to everyone, but I think there is uniform support for this bill among state's attorneys. I urge your favorable consideration as well.

Chairman DeKrey: On line 10, why is Burleigh and Stutsman County named specifically, or any county. Why is that?

Jerod Tufte: You can bring the action in Burleigh or Stutsman, but you don't have to. You can do it in any other county; so if the AG's office is handling it, they can have in a venue there.

Jonathan Byers, AG's office: Support, this legislature first passed a bill requiring civil commitment of sex offenders back in 1997, at that time, the legislature placed the primary responsibility of going forward with a civil commitment on the county state's attorney. What the state's attorney is typically required to do about 6 months before an inmate is being released from the penitentiary that may qualify for civil commitment, the DOCR evaluates the offender, and then makes a recommendation to the state's attorney, whether that person fits the criteria of a sexually dangerous individual. The state's attorney then has to assemble the records that will help the state's attorney get a handle on whether he felt there was enough evidence to proceed. The state's attorney then would have to prepare a petition for commitment of that individual and then the states' attorney would be responsible for up to two hearings in the case; a preliminary hearing and a commitment hearing. The first commitment case under the legislation happened back in 1999, and in the first few years after it was passed, we just had a handful of sexually dangerous individuals that were committed. Subsequent to the Dru Sjodin case, it kind of exploded and we've had 40 individuals committed as sexually dangerous individuals, there are another 16 who have been evaluated and the recommendation is that they be civilly committed and there are two more that are currently being evaluated. If it weren't for the civil commitment process, many of these individuals would be on the streets in ND and that presents a very serious public safety issue. The civil commitment process that I've just described is an additional responsibility that the legislature placed on states' attorneys, and the states' attorneys have stepped up and proceeded with all those cases of those 40 individuals who are now committed. But there have been states' attorneys who expressed

concern about the lack of resources, lack of time and lack of expertise in handling these kinds of cases. So SB 2340 will transfer the primary responsibility for handling civil commitment of sexually dangerous individuals to the AG's office. Throughout the bill, most of the changes that are being made is to either add "and the attorney general" "or the attorney general" to effectuate that; to give the AG the ability to handle these kind of cases. On page 1 of the bill, where it refers to Burleigh County and Stutsman County, one of the reasons that happened, is because for persons here in Burleigh and the James River Correctional Center is in Stutsman County, and sometimes these hearings are being held while the person is in still an inmate, so there is less transportation costs that go with that. On the bottom of page 2, adds a referral process for the juveniles that are in the Division of Juvenile Services custody. Right now, there is nothing statutory that required the Division of Juvenile Services to make a referral. They were doing it anyway, but just to include that responsibility so that it is clear that down the road, if somebody else is in charge of Division of Juvenile Services, they know they have a responsibility to make a referral for those juveniles who are there in their custody, that they will do that. On page 3, subsection 5, that sets up a process by which it is still the state's attorney of the county can still elect to proceed, to file a petition, to allow the AG to do that, it kinds of provides a dual notice of what both of those entities intentions are, whether the AG intends to file one, or the state's attorney intends to file, that they notify each other of the process. Through the rest of the bill, it is just primarily adding "or the general attorney", "and the attorney general".

Chairman DeKrey: Jonathan, why does the fiscal note say there is no anticipated fiscal impact?

Jonathan Byers: The Department of Corrections is not anticipating a fiscal impact because their responsibility for still doing the referrals is the same. The fiscal impact is going to be to

the AG and on page 11, there is an appropriation to the AG for \$436,000 and that's to cover an attorney, a paralegal and secretary, which would be needed to go forward with filing these cases.

Rep. Delmore: You're doing a lot of these cases right now anyway, are you not?

Jonathan Byers: I do the parallel process in the criminal ring. I am the criminal prosecutor; I file a criminal charge to try to get them put in prison. This person in the AG's office, would pick it up once they are going to be released from prison beyond their criminal punishment, are they still dangerous and if so, then somebody in the civil realm would go forward with the petition but the proof of that would be much the same as what I do in the criminal realm. They would try to prove that "yes, the person served their punishment, but they are still a sexually dangerous individual and they shouldn't be walking the streets".

Rep. Delmore: Would this be utilized by both large and small counties. How familiar are the state's attorneys in Fargo, Grand Forks, and Bismarck as far as following the process, because I would assume that they probably have more examples.

Jonathan Byers: If I can just liken it to the criminal prosecution that I use. I find my work much more in the smaller counties, because they deal with those cases less, they are more in need of the expertise. There may be some cases in the civil commitment realm where the larger counties still decide that they want to do their own petition and go forward; they have more staff members to do that as well. I see this as a great help to the smallest counties, and some help to the larger counties as well.

Rep. Delmore: This is for the people in civil commitment, when they served their time. This is after we had them in treatment.

Jonathan Byers: It is the last resort, because it is an expensive commitment process. This last resort, once the criminal justice has done all they can to try to rehabilitate the offender,

provide treatment, provided incarceration, once that's all been done and the only thing left, is this person is now going to be free to walk the streets, it is something that we will take up for the worst, of the worst guys and provide additional security and treatment of them until such time as they are no longer a sexually dangerous individual.

Rep. Griffin: How many commitment cases went on in the state last year?

Jonathan Byers: I would say that when I indicated that there are 16 that have been evaluated and the recommendation is that they be committed; those 16 probably came from year 2006. There may have been others who have been committed and were on referral, and first commitment hearings were early on in 2006. You could be looking at 20 of those possibly being from last year.

Rep. Griffin: Out of those 16, how many came through the AG's office getting involved.

Jonathan Byers: Does this have an emergency clause.

Chairman DeKrey: No.

Jonathan Byers: Of those 16, there are going to be four to six months before we can do anything with it, and there may be some of those guys that are going to be subject to be released from custody prior to that time, so a states' attorney may be, in some of those cases, may be required to file a petition and start the hearing process. I don't think all of them would get through yet, so the AG, if the appropriation went through and was approved, we would be able to pick up and help with the hearings that would take place. But state's attorneys would have to file the petitions if they are going to be released prior to August 1.

Rep. Griffin: How many of these do you foresee that the AG will get involved in.

Jonathan Byers: It is conceivable that we could help with all of them, but not from the very beginning of the process, because the state's attorney might have to file the petition, then our staff could help with the hearings.

Rep. Meyer: Under this, I'm referencing on page 2, line 8, doesn't this expand the civil commitment quite a little, when you are talking about a juvenile.

Jonathan Byers: That's a good question. There was always an ability to do a civil commitment of juvenile sexually dangerous individuals, what wasn't in statute was the requirement that DJS make a referral for that, so they were doing it anyway, even though they weren't required to, but because our adult DOCR is required by statute to make a referral, it seems logical instead of letting it fall on them as an optional thing, that they have the same statutory duty as they know that somebody is sexually dangerous that they should make a referral to let a states' attorney know that. Nothing is changing as who can be committed; it is just a requirement of a referral for that.

Rep. Meyer: Doesn't that take away; a juvenile is under a different procedure than the adults. Is that allowed at their discretion anyway?

Jonathan Byers: Usually when this comes up in a juvenile's case, there will be a juvenile who might be aging out of the juvenile system; they've either reached age 18 or 20, and the juvenile system may not feel that they've been rehabilitated yet enough to be safe to be out in public and so right now, under existing law, they do make a referral to the states' attorney, saying we have a kid aging out of the juvenile system, you might want to look at him to see if you want to file a petition as a sexually dangerous individual. That already happens; this just makes it a statutory responsibility for making that referral. Nothing in really changing on juveniles being referred or creating any statutory ability to do that. It always was there.

Rep. Delmore: Can you tell me how you arrived at \$436,000 on the fiscal note. If we are looking at 16 cases, from the information you have given us, I'm curious how that came to be the figure.

Jonathan Byers: We tried to figure out whether this person at the AG's office would be a half-time position, is it something that we can hire a person and they can assist with other things. When we started to look at what it's gotten to be for the number of referrals and the number of commitments, we actually believe that it's going to take 100% of an attorney's time, if they are going to be doing them in every county. There is a lot of travel involved and so it's going to take a full time attorney, put on the benefits, the salary for a paralegal and benefits, and a secretary and benefits. Then it would cover some of the costs of travel, overnights, etc.

Chairman DeKrey: So we're looking at 3 FTE's, benefits and travel.

Jonathan Byers: This \$436,000 was not in the AG's budget; there are a couple of reasons for that. First of all, the budget had already been done by the time the state's attorneys came forward and indicated that they wanted this; the other thing is that it is not to enhance our office, it is actually to assist the counties, and the states' attorneys were the ones that came up with the idea. We do support the notion because this is an important process and the ones that wind up being sexually dangerous individuals and get committed, are the bad guys, the worst of the worst. We believe that it is important that they be kept out.

Rep. Wolf: In January or February, we passed a bill through here that will now make the worst of the worst a class AA felony, therefore incarcerating them for 20 years to life. Wouldn't this number of civil commitments be coming down now?

Jonathan Byers: I think you may see a small impact by that, but one of the things that happens is some of the people that wind up being sexually dangerous individuals don't come out of our criminal court process. They move here from other states, they come from juvenile systems from other states, they come out of the federal court system, once they have been released from the Bureau of Prisons, we've got a lot of people that wind up living here in ND that we have to take some action on, that may not have been subject to our greater penalties

that were created by the bill that you are talking about. We had a kid that came out of Montana, stayed in Montana, he aged out of a juvenile program over in MT, they bought him a bus ticket and sent him to ND, and he ended up living in a park down here in Bismarck, in a tent. So ND got stuck with picking up the pieces for that.

Chairman DeKrey: Couldn't we have bought a ticket back to MT.

Jonathan Byers: It would have been cheaper than \$436,000.

Chairman DeKrey: Thank you. Further testimony in support.

Aaron Birst, State's Attorneys Association: Support. Although it was 16 cases that you saw the previous year, once you are committed, every year you have a right to review hearing, and right now there are currently about 50 people in treatment at the State Hospital. Those individuals would also have to have their day in court. So when the AG's office was indicating that it was a full time job, it wouldn't be a full time job just to do 16 cases a year, it's significantly more than that. This was a states' attorney initiative, the AG has been working on this also. It is important to realize that the state's attorneys must still have the local control if they needed that. But this would give them another tool. It makes sense, because currently the AG does not do civil commitments; only the state's attorneys do, but the AG is fundamentally involved in the sex cases because they work on them, in the Scoring of Sex Offenders, they work with the other agencies in the state government system, which is the State Hospital and DOCR. Typically you see the offenders that are going through the commitment proceedings from the DOCR, although the law allows anybody to be committed off the street. You could have somebody out there, and that's why we have a number of cases involving someone coming from out of state, they are no longer subject to the department of corrections type of incarceration; but at the same time, they can get the civil commitment process.

Rep. Delmore: So what you're telling us, as I understand the position, that's a very large fiscal note for the state to be paying for something state's attorneys are charged to do, is it not. Isn't that part of the job that you are given, I understand the need for extra cases. This is a very large fiscal note that we're being asked to pick up out of the general fund for something that the state's attorneys and local entities are supposed to do.

Aaron Birst: What I would say, though, this body is already funding this system because this body is funding them through the DOCR, through the State Hospital. Even if the state's attorney does the particular case itself, they are going to end up in state institutions. Now the only reason that that becomes significant is because if the AG is already efficient with those state organizations, it can actually save the state some time. The example I give is in the bill where Rep. DeKrey mentioned, "why Burleigh or Stutsman County", that would be a great efficiency instead of sending state doctors across to Billings, and every county in the state, they could just bring them to Stutsman County or Burleigh County and save money in that way. So in some ways, you are correct, our state's attorneys not doing the work anymore, and is the state picking up some of that work, yes. But could you break it down and have some more benefits to the system instead of having two doctors, yes.

Rep. Delmore: To a very slight degree, this money is very specifically allocated, and it's not listed as a savings to the State. Now, those hearings could be held in those counties where they were at.

Aaron Birst: The question was could those hearings be held in Burleigh County or Stutsman County, now; no, it would have to be if the local state's attorney in Cass County, would be filing the petition, it would have to be held in Cass County. If Adams County was filing the petition, it would be held in Adams County.

Rep. Delmore: If the AG's office were involved, it could be held there; because the AG can already help you out with these cases, can he not.

Aaron Birst: Only Advisory.

Rep. Griffin: Do you see these cases in the larger counties, such as Cass County, continuing being held in their county.

Aaron Birst: If I were the local state's attorney, I would want someone else to do this work, because I know how much time it takes. However, I can tell you that the current Cass County State's Attorney would wish to continue to do these; in contrast the current Grand Forks State's Attorney does not want any of these. I would be expecting the larger jurisdictions being able to handle these cases; so if they feel it is politically necessary, they would continue to do these. Mr. Tufte is the finest example, and Ladd Erickson is another fine example of obviously very capable good attorneys, but the amount of time it takes, and we're talking about, when DOCR sends the paperwork to you, just reading through the paperwork is about 2 feet deep. I think in the smaller communities, it would be a huge help.

Rep. Meyer: On the civil commitment procedure, I understand you have served your time in prison and you still have a problem. But on these cases where they are shipped in and they are living here in a tent, what happens then. Can they just be picked for not violating any laws here; they served their time in Montana or wherever they have been and they come here. Do they have to break a law or can a state's attorney or can they just be picked up and civilly committed here before they do anything wrong here.

Aaron Birst: There is some criteria for the civil commitment, first off you have to have committed a predicated offense, which is for the most part, like gross sexual imposition, so if somebody moved here from another state, for some reason, local law enforcement or the prosecutor before being able to file a civil commitment would have to know that they violated

the law, and then they would have to be some sort of probable cause to believe that they are likely to reoffend, and how that can take place, can vary. If somebody moves here, had a predicate offense and you contact Montana, and they said, "oh yeah, before we let him go, our doctor said this guy is going to commit another GSI". That theoretically would then give us probable cause to file a petition, that in turn creates a pick up order (not a warrant, because that for a criminal matter) where they pick up the person, then they bring him to a doctor for a cursory examination to determine whether a predicate offense has been met and whether this is some psychological factors that would cause him to likely reoffend. At that point, a petition would be filed and then it goes to the state doctors.

Chairman DeKrey: Thank you. Further testimony in support. Testimony neutral or in opposition.

John Val Emter: People are greedy, they want more and more money. Perhaps they should put bracelets on sex offenders.

Chairman DeKrey: Thank you. Further testimony neutral or opposed.

Sally Holewa, State Court Administrator: (see attached testimony). We are neutral.

Rep. Delmore: So you don't see this as a savings, as far as locating these cases in those two counties.

Sally Holewa: No, actually these cases are being heard around the state now. We would have to move resources to these two counties, because this would create a backlog.

Rep. Delmore: I appreciate your statement in here that talks about the amount of time it takes to do as civil commitment, can you tell me how the review process of those people who are committed.

Sally Holewa: My understanding of the review process, is that they have the right to ask for an annual review and I don't know how many of them ask for that. I do know that I just had an

e-mail when I was polling the district judges, one of them specifically said he had done two annual reviews and they took between 12-15 hours for trial.

Rep. Delmore: Do those who have a review come to these two counties now, or go back to the original county.

Sally Holewa: They have been going back to their original county. Essentially what is happening right now, that most of these are coming out of where the person was sentenced on the crime, and the state's attorney for that county is actually initiating the petition and carrying forward. Once they are filed in that county, that's where the venue stays.

Rep. Delmore: Could you get us the information about those 50, how many of them have asked for a hearing. Do you have a way of getting that.

Sally Holewa: I may, it depends if we actually enter specific code in those cases for reviews, otherwise probably not.

Rep. Koppelman: Did you oppose this provision in the bill in the Senate and if so, what was their response.

Sally Holewa: Actually we did not oppose it in the Senate, and we were caught a little flat-footed; we weren't aware that the change was coming, and we found out just in time to set up our staff attorney to sit through the hearing but not enough in advance to find out who had generated the bill and what the intent was. No we did not.

Rep. Koppelman: Have you since visited with the AG's office to determine the intent and try to see if your concerns can be allayed.

Sally Holewa: What we did, we used the Judge's Association lobbyist, Jack McDonald, to do that sort of thing for us, to find out the intent of it. I specifically spoke with Peter Wilke, the President of the State's Attorneys Association, and basically we were told that Stutsman and

Burleigh were added in there, first we were told for the state/county transport time, and next we were told to save the AG and State Hospital travel time.

Rep. Delmore: It was stated that a lot of these are rural county cases, as I look through both 2006 and 2005, they are in Barnes, Burleigh, Cass, Grand Forks, Ramsey and Williams are not necessarily small town/small county issues.

Sally Holewa: That's right.

Chairman DeKrey: Thank you. Further testimony neutral or in opposition.

David Boeck, lawyer for Protection and Advocacy Project: (see attached testimony).

Chairman DeKrey: Is your testimony for, against or neutral.

David Boeck: I think I have been mostly been for. I came out neutral on testimony.

Rep. Koppelman: Do you then believe that some provision in the bill would maybe clarify that the proceeding could be brought in Burleigh or Stutsman if that individual is currently residing there, would that satisfy your concern.

David Boeck: yes.

Chairman DeKrey: Thank you. Further testimony neutral or in opposition. We will close the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2340

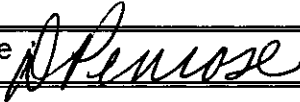
House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/7/07

Recorder Job Number: 4586

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at SB 2340. Rep. Koppelman didn't you have amendments for this, taking out Burleigh and Stutsman County.

Rep. Koppelman: I didn't have anything written, I can do it verbally. I move that we amend the bill to remove the new underscored language on line 10, page 1 and remove section 15. The two amendments basically, Jon Byers from the AG's office, came over afterwards and said that they could live without that language in the bill. Present law states that they can do it in their county of residence, and if they are at the Pen or at the State Hospital, then they are in that location, so removal of section 15, removes the fiscal note and I think they can try and get this done without costing any additional money. I would change the motion to remove the underscored language on line 10, page 1, and amend section 15 from \$436,107 to \$5,000. That will accomplish the rereferral to Appropriations and then they can deal with the money.

Rep. Griffin: Second.

Chairman DeKrey: Voice vote. Motion carried. We now have the bill before us as amended. What are the committee's wishes.

Rep. Meyer: I move a Do Pass as amended and rereferral to Appropriations.

Rep. Koppelman: Second.

Page 2
House Judiciary Committee
Bill/Resolution No. SB 2340
Hearing Date: 3/7/07

Chairman DeKrey: The clerk will call the roll.

11 YES 0 NO 3 ABSENT

CARRIER: Rep. Onstad

DO PASS AS AMENDED WITH REREFERRAL TO APPROPRIATIONS

Date: 3/7
Roll Call Vote #: /

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2340

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP as Amended & Resefer

Motion Made By Mey Seconded By Kop

Representatives	Yes	No	Representatives	Yes	No
Chairman 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) 11 No 0

Absent 3

Floor Assignment Onst

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

REPORT OF STANDING COMMITTEE

SB 2340: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2340 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "25-03.3-02,"

Page 1, remove lines 6 through 13

Page 11, line 16, replace "\$436,107" with "\$5,000"

Renumber accordingly

2007 HOUSE APPROPRIATIONS

SB 2340

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2340

House Appropriations Committee
Government Operations Division

☐ Check here for Conference Committee

Hearing Date: 3/19/07

Recorder Job Number: 5273

Committee Clerk Signature



Minutes:

Chairman Carlson opened the discussion on Senate Bill 2340.

Representative DeKrey explained the bill.

Chairman Carlson: This has requirements for what they must do but there is no money for doing those requirements? Are they doing any of this now?

Representative DeKrey: They are advising the counties that are doing it they have staff available. This would make them actively involved.

Representative Kempenich: What is the number of people they are basing this off of?

Representative DeKrey: I have testimony here that shows county by county in 2006 and 2005. There were 22 in 2006 and 16 in 2005.

Chairman Carlson: So the bill adds more duties to have the Attorney General assist with the counties. And when they prepared the original bill the fiscal note they put on it was \$400,000 and you amended it down to \$5,000 and did you adjust the language?

Representative DeKrey: All we did was drop it down to \$5,000 so you could decide what to do from there.

Representative Kroeber: If you are going to civilly commit someone they are going to jail.

Representative DeKrey: It is up to the local counties to prosecute or to take them through the civil commitment process. The county pays the bill. This would shift it back to the Attorney General of the state to help the counties do that, but they would be paying the tab for it.

Chairman Carlson: So this is a cost savings to the county?

Representative DeKrey: That is correct.

Representative Kempenich: Is this because of expertise in the counties?

Representative DeKrey: That is part of it.

Representative Skarphol: Is there anything that would prohibit the counties from retaining the Attorney General's office to represent them?

Representative DeKrey: Not that I know of.

Representative Skarphol: So they could in theory hire the Attorney General's office.

Representative DeKrey: Yes, in theory.

Aaron Burst, representing the county States Attorneys testified in support of the bill. ,

Chairman Carlson: Why wouldn't they turn it over if someone else is going to pay for it?

Aaron Burst: I thought the same thing, however I think there can be some political questioning of somebody's capabilities. To be honest there are some bigger state's attorneys that did not want to give this up because they felt that somebody would say that they are not doing their job.

Chairman Carlson: Couldn't the counties hire the Attorney General?

Aaron Burst: I don't know if the Attorney General would ever charge somebody but statutorily I don't know of any authority that gives the Attorney General the ability to come in and do it but I don't think there is anything prohibiting it.

Chairman Carlson: In your opinion the bill is written properly?

Aaron Burst: The only part that could be controversial is gone.

Wayne Stenehjem spoke in support of the bill.

Chairman Carlson: The way the bill was written could you still bill for services?

Wayne Stenehjem: No.

Representative Kroeber: Where will Mr. Byers be in this position?

Wayne Stenehjem: He will still be full time.

Chairman Carlson: Do you have room for these FTEs?

Wayne Stenehjem: In our downtown office.

Representative Glassheim: If you were given authority to bill counties for this work, what would the argument be against doing that?

Wayne Stenehjem: The argument would be that you would get small county ND with a one or two of these very expensive processes who would then have to cover the costs.

Chairman Carlson: So you are saying these little counties couldn't afford it? By law they are required to take care of those cases anyway.

Wayne Stenehjem: Yes.

Aaron Burst: If the committee would recommend the Attorney General do this and not fund it the state's attorneys would withdraw their request for this legislation because we certainly don't want to put the Attorney General in position where he has to do this and yet I know what his staff is going through right now.

Representative Williams: With the amendment on section 15 dropping the \$436,000 to \$5,000 if that stayed in there you wanted us to kill the bill.

Aaron Burst: If the legislation could be read that some how the Attorney General and the State's Attorneys could still get together and, currently right now it would be almost that the

State's Attorneys say I don't want to do the case and the Attorney General would have to take the case. Maybe this legislation could go through where the Attorney General and the State's Attorneys could still have an informal agreement where they worked through things. Certainly if it said the Attorney General must do these cases and the counties don't have to do these cases and you don't fund that I would ask you to kill the bill.

Representative Williams: In listening to Wayne's comments, he does not have the time in his office.

Chairman Carlson: That is the impression I was left with.

Representative Glassheim: I am thinking now of some permissive language that permits State's Attorneys to contract with the Attorney General's office to handle these kinds of cases and permits the Attorney General to charge for actual costs. That handles one part of it which is the expertise but it doesn't handle the local property tax relief section.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2340

House Appropriations Committee
Government Operations Division

☐ Check here for Conference Committee

Hearing Date: 3/20/07

Recorder Job Number: 5353

Committee Clerk Signature	<i>Kanya Voegeli</i>
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Minutes:

Chairman Carlson opened discussion on Senate Bill 2340.

Chairman Carlson: Do we have enough laws on the books to civilly prosecute sex offenders?

Wayne Stenehjem: I think we do.

Chairman Carlson: Are the mechanics wrong that we have these young states attorneys not understanding what they should be doing?

Wayne Stenehjem: I think that there are some states attorneys that find themselves faced with having to do one of these very difficult cases.

Chairman Carlson: In your opinion there are things higher on your priority list.

Wayne Stenehjem: There are other things that are higher on my list as far as my budget but as Mr. Burst stated yesterday in his testimony if it is between this and funding for the crime lab the states attorneys support the crime lab.

Representative Kempenich: I would like to see the counties pick up the costs for this. It is for the counties.

Representative Skarphol: I think what Representative Kempenich is saying he is willing to go with a do not pass but in the event that it passes he would like to amend it requiring the counties to contract and pay for the Attorney General's services. The alternative if the bill goes

on the floor there is money in the Attorney General's budget to train the states attorneys. In the event that it passes and gets turned around on the floor and passes, we would prefer to have it in a form that we could live with we propose to put it a mandate on the Attorney General's office that we didn't fund.

Representative Williams: Yesterday in the testimony, when the original appropriation came through for \$400,000 it would have required an attorney, a paralegal and a secretary. The Senate stripped out basically all of the money through in \$5000.

Chairman Carlson: The House Judiciary did that.

Wayne Stenehjem: The Senate sent this bill out with a DO NOT PASS recommendation but it passed.

Representative Williams: The House did that then sent it to us. They put in \$5000 and pretty much left the bill the same. It doesn't make sense.

Representative Glassheim: They basically think it is a good idea but we are not sure about the money so we will leave it up to appropriations to figure out the money.

Representative Skarphol: What we are doing in essence is changing appropriation in section 14 to where it gives the counties the opportunity to contract with the Attorney Generals office for these services and they be responsible for the \$436,000 to cover the costs.

Chairman Carlson: They have to hire the people to do the work that they ask him to do.

Representative Skarphol: They would get paid from the counties.

Chairman Carlson: What if the counties don't choose to do it and they are stuck with the people.

Wayne Stenehjem: Or what if only ten counties do it. We can't hire one-tenth of an attorney.

Chairman Carlson: My opinion is that if we took this to the floor we would convince them that the best thing to do is to help train these states attorneys. The Attorney General is going to

provide the assistance that he is already providing. We have significant laws on the books to handle civil commitments. If we make this look pretty by saying all counties must join and pay him a fee isn't the right answer either.

Wayne Stenehjem: You could send this out to the floor now with my budget I would imagine is two or three days down the road and see what happens with the bill. If it passes go accordingly.

A motion was made by Representative Skarphol, seconded by Representative Glassheim for a DO NOT PASS recommendation to the full committee. The committee vote was 8 Yeas, 0 Nays and 0 Absent and Not Voting. The bill will be carried by Representative Skarphol.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2340

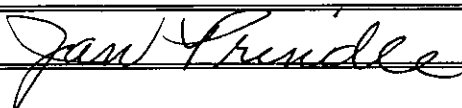
House Appropriations

☐ Check here for Conference Committee

Hearing Date: 21 March 07

Recorder Job Number: 5394

Committee Clerk Signature



Minutes:

Chairman Svedjan opened discussion of SB 2340. Do you have amendments for this bill?

Representative Skarphol: We do not have amendments. We had considerable discussion with the Attorney General's office about this. The AG office conveyed to us that he felt a more appropriate avenue to follow with regard to this particular office was for his office to train the states attorneys who need to understand this. There was \$15.0 already included in his budget for his office to do this training. Therefore, it was felt that we did not need to pass this bill.

The recommendation of the Government Ops subsection of Appropriations is for a Do Not Pass. I make the motion of Do Not Pass.

Representative Carlson: I second.

A roll call vote was taken: Yes: 22, No: 0, Absent: 2 (Williams and Monson)

The Do Not Pass prevailed.

Representative Skarphol will carry the bill.

Date: 3/20/07
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2340

House _____ Appropriations- Government Operations _____ Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do NOT PASS

Motion Made By Skarphol Seconded By Glassheim

Representatives	Yes	No	Representatives	Yes	No
Chairman Al Carlson	✓		Vice Chairman Ron Carlisle	✓	
Rep Keith Kempenich	✓		Rep Bob Skarphol	✓	
Rep Blair Thoreson	✓		Rep Eliot Glassheim	✓	
Rep Joe Kroeber	✓		Rep Clark Williams	✓	

Total Yes 8 No 0

Absent _____

Floor Assignment Skarphol

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

Date: 3/21/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2340

House Appropriations Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken No Not Pass

Motion Made By Skarphol Seconded By Carlson

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich	✓				
Representative Wald	✓		Representative Aarsvold	✓	
Representative Monson	✓		Representative Gulleson	✓	
Representative Hawken	✓				
Representative Klein	✓				
Representative Martinson	✓				
Representative Carlson	✓		Representative Glassheim	✓	
Representative Carlisle	✓		Representative Kroeber	✓	
Representative Skarphol	✓		Representative Williams	✓	
Representative Thoreson	✓				
Representative Pollert	✓		Representative Ekstrom	✓	
Representative Bellew	✓		Representative Kerzman	✓	
Representative Kreidt	✓		Representative Metcalf	✓	
Representative Nelson	✓				
Representative Wieland	✓				

Total (Yes) 22 No 0

Absent 2

Floor Assignment Skarphol

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

REPORT OF STANDING COMMITTEE (410)
March 22, 2007 4:17 p.m.

Module No: HR-53-5986
Carrier: Skarphol
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2340, as amended, Appropriations Committee (Rep. Svedjan, Chairman)
recommends **DO NOT PASS** (22 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).
SB 2340, as amended, was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2340

AH #1

1-29-07

January 29, 2007

Senate Judiciary Committee
Capitol Building
Fort Lincoln Room
Bismarck, North Dakota

Committee Members:

On behalf of both my office and the North Dakota State's Attorneys Association, I offer this testimony in favor of SB 2340.

The 60th Legislative Assembly of the State of North Dakota has made it a priority to strengthen and, where necessary, fine-tune the process for the civil commitment of sex offenders. The present system, as a practical matter, has the following characteristics: sex offenders are housed in the North Dakota State Penitentiary; at some point in time, these offenders are preliminarily assessed by officers of the North Dakota Department of Corrections; these same NDDOC officers will supervise these offenders if and when they are released back into the general public; if sex offender treatment is required, the North Dakota Department of Human Services may be involved; these offenders will be formally assessed by trained professionals at the North Dakota State Hospital, where they may eventually be housed during their commitment; intertwined in all of this are the guidelines of the State of North Dakota's SORAC committee. The State of North Dakota is heavily involved in this entire process. That is how it should be. This is an issue of statewide concern. However, when it comes time for the most crucial component of the civil commitment—the filing of the petition—the matter is sourced out to fifty-three different counties where they will be processed by fifty-three different State's Attorneys.

Uniformity must be added to this process, and the involvement of the Attorney General is the most logical solution. With the resources and expertise of the Attorney General's office, you eradicate one significant inefficiency in the present process. The North Dakota State's Attorneys Association is grateful to Attorney General Wayne Stenehjem for answering the call in this matter. As it has been with consumer fraud, sex offender registration, methamphetamine, internet luring and so many other issues, Wayne Stenehjem is now again placing highest priority on the safety of North Dakota citizens. I urge you to give this bill a do pass recommendation.

Thank you for your time and your consideration. If I can be of assistance, please don't hesitate to contact me at my office (701) 780-8281.

Sincerely,



Peter D. Welte

Grand Forks County State's Attorney
President, North Dakota State's Attorneys Association

Att #2
1-29-07

Senate Judiciary Committee
Sixtieth Legislative Assembly of North Dakota
Senate Bill No. 2340
January 29, 2007

Good morning, Chairman Nething and Members of the Senate Judiciary Committee. I am David Boeck, a State employee and lawyer for the Protection & Advocacy Project. The Protection & Advocacy Project advocates on behalf of people with disabilities including children with serious emotional disturbances.

This written testimony summarizes and supplements the testimony I gave this morning.

For several consecutive legislative sessions, the Legislature has wrestled with detention, punishment, and treatment of sexually dangerous individuals. Interim studies preceded major legislative action.

1999 – Interim Criminal Justice Committee submitted a report, "Sexual Abuse and Sexual Offenses Studies," recommending HB1031 (requiring a mark on the driver's license of a sex offender).

2001 -- Interim Criminal Justice Committee submitted a report, "Sexual Offender Study," recommending SB 2034 (expanding the statute to include individuals with mental retardation; extending the period for evaluations from 30 days to 90 days, codifying procedures to be used by the Penitentiary for referring inmates; clarifying what portion of commitment proceedings are open; allowing an individual to choose to be detained in a local correctional facility before a probable cause

hearing; and providing rulemaking authority for the Department of Human Services) and SB 2035 (criminalizing the luring minors by computer, criminalizing street gang initiation of sexual acts, making indecent exposure a crime for which a person is required to register as a sex offender, and to expand the statute of limitations for gross sexual imposition)

2003 – Judiciary A Committee, “Constitutional and Statutory Revision, Civil Commitment of Sexual Predators,” considering a U.S. Supreme Court decision, Kansas v. Crane, and deciding to wait to revise state laws until the North Dakota Supreme Court has addressed Crane

2003 – Corrections Committee, “Correctional System Study, Division of Juvenile Services,” mentioning the existence of the Division of Juvenile Services’ “pretreatment program for sex offenders”

SB 2340 expands the system’s reach over juvenile offenders. See Page 2, Section 3, lines 25-31 and page 3, lines 1-3. Ms. Feland explained the provision is only to amend recordkeeping at the Division of Juvenile Services. If so, I recommend an amendment to make this clear. See the attached proposed amendment.

As written, the sentence beginning on page 2, line 25 of SB 2340 appears to mandate the Department of Corrections’ Division of Juvenile Services (DJS) to keep treatment records for every child whose offense includes sexually predatory conduct. Recall the definition of sexually

predatory conduct includes engaging in sexual contact with a victim under age fifteen. See N.D.C.C. § 25-03.3-01 (9)(a)(4).

[A 14-year old child whose offense is burglary would fall into this category if the child had a 14-year old accomplice and they had sexual contact with each other while planning the burglary or after the burglary when hiding the stolen goods. SB 2340 would mandate DJS's recordkeeping responsibilities.]

As written, the sentence beginning on page 2, line 27 of SB 2340 appears to trigger an assessment to determine referral for commitment as sexually dangerous. See page 3, lines 4-8, which shows current law would control referral, depending on its outcome.

Since 2005, we have had public commitment hearings for sexually dangerous individuals in North Dakota. On the other hand, we keep all juvenile proceedings private and all other civil commitment proceedings private. This change would compromise the child's privacy.

Our system maximizes the potential for rehabilitating juveniles. Public sex offender commitment proceedings will compromise the child's ability to improve. The child's mental health records would be public; the child would have a lifelong label as sexually dangerous even if the child is eventually found not committable as sexually dangerous; the child would have to register as a sex offender.

If committed as sexually dangerous, the child would enter the State's treatment program for sexually dangerous individuals. The child would be among adult sexually dangerous individuals, subject to abuse and horrible role modeling.

We should not abandon the Division of Juvenile Services' "pretreatment program for sex offenders" that the interim Corrections Committee noted in 2001-2002 unless there are substantial, psychologically sound reasons to do so. We need to study this before acting to broaden the number of children subject to commitment as sexually dangerous.

Committee Vice Chairman Lyson asked how many children would be affected. Ms. Feland disclosed her knowledge of two. There are enough children engaged in sexually alarming conduct that a private facility, Home on the Range, Sentinel Butte, ran a Pathways program for over 15 years, "designed for residents who have a history of sexually offensive behaviors including exhibitionism, child molestation, and sexual assault." Home on the Range closed its Pathways program last November. This suggests there have been more than two children perpetrators. This also suggests that, upon proper treatment, these children are not destined to become sexually dangerous adults.

Early this afternoon, I spoke with a Protection & Advocacy Project advocate who works with children with significant emotional disturbances. She is aware of one 8-year old, one 10-year old, one 11-year old, two 12-

year old, two 13-year old, five 14-year old, and one 16-year old children who have engaged in conduct within the definition of sexually predatory conduct. [The 8-year old was molested by his uncle and he later molested his younger sister. This is a good example of a child who could be rehabilitated and not become an adult sex offender.]

Thank you for the opportunity to testify on this legislation. Please let me know if you have questions.

Proposed Amendments to SB 2340

Page 3, line 3, after the period, add "The department of corrections and rehabilitation and its division of juvenile services shall not refer and a state's attorney and the attorney general shall not accept referral of child under 18 years old unless the child has been tried as an adult and convicted of sexually predatory conduct."

Renumber accordingly

Senate Bill 2340
House Judiciary Committee
March 6, 2007

By: Sally A. Holewa, State Court Administrator

Good Morning Representative DeKrey and members of the House Judiciary Committee.

For the record, my name is Sally Holewa. I am the State Court Administrator. I am here this morning to speak to SB 2340.

The judiciary is neutral on the bill as a whole. However, there is one clause, on page 1, line 10, of the bill, that raises a concern for us. That is the clause that specifies that venue may be in Burleigh or Stutsman County.

Over the past two years, there have been 38 petitions filed for civil commitment of sexually dangerous predators. Currently those petitions are filed in counties across the state (see figure below).

Commitment of Sexually Dangerous Predators
Case Filings in 2005 and 2006

<u>2006</u>		<u>2005</u>	
County	Number	County	Number
Burleigh	7	Barnes	1
Cass	3	Benson	1
Grand Forks	4	Burleigh	4
Pembina	1	Cass	5
Ramsey	2	Grand Forks	1
Stutsman	1	Ramsey	2
Ward	1	Wells	1
Williams	3	Williams	1
Total	22	Total	16

I have polled the district court judges who have been assigned to these cases. Based on their experience, the average case takes 2 hours of pre-court preparation time, 2 to 3 hours of in court time, and an additional 5 hours of chamber time to draft an opinion. A contested case can take up to a day and a half of trial time and an equal number of chamber time.

This may sound like a lot of time to devote to a single case, but the gravity of the consequences of the decision -- what could essentially become to a life sentence in a mental health institution -- warrant that investment of time. If ever there was a case that required a slow and deliberative review of the evidence and the law it is this

The way things stand now, the cases are spread out across the state. This minimizes the impact of the time needed to process them. The proposed amendment to the statute that would allow any case to be filed in Burleigh or Stutsman County might lead to the concentration of the cases in those two counties.

We are concerned that the unintentional consequence of concentrating these cases in just two counties will artificially skew the statistics we rely on for determining judge need and chamber location.

It is the preference of the judiciary that venue continue to be determined as it is currently set out in statute.

(1)

February 5, 2007

Senate Appropriations Committee
Capitol Building
Bismarck, North Dakota

Committee Members:

On behalf of both my office and the North Dakota State's Attorneys Association, I offer this testimony in favor of SB 2340.

This Legislative Assembly made it a priority to strengthen and, where necessary, fine-tune the process for the civil commitment of sex offenders. The present system, as a practical matter, has the following characteristics: sex offenders are housed in the North Dakota State Penitentiary; at some point in time, these offenders are preliminarily assessed by officers of the North Dakota Department of Corrections; these same NDDOC officers will supervise these offenders if and when they are released back into the general public; if sex offender treatment is required, the North Dakota Department of Human Services may be involved; these offenders will be formally assessed by trained professionals at the North Dakota State Hospital, where they may eventually be housed during their commitment; intertwined in all of this are the guidelines of the State of North Dakota's SORAC committee. The State of North Dakota is heavily involved in this entire process. That is how it should be. This is an issue of statewide concern. However, when it comes time for the most crucial component of the civil commitment—the filing of the petition—the matter is sourced out to fifty-three different counties where they will be processed by fifty-three different State's Attorneys.

Uniformity and stability must be added to this process, and the involvement of the Attorney General is the most logical solution. With the resources and expertise of the Attorney General's office, you eradicate one significant inefficiency in the present process. The North Dakota State's Attorneys Association is grateful to Attorney General Wayne Stenehjem for answering the call in this matter. The North Dakota State's Attorneys Association is well aware that the fiscal note attached to this bill is not small. But, compared to the consequences of one sex offender wrongly being released into the public, it is a logical and worthy expense.

Thank you for your time and your consideration. If I can be of assistance, please don't hesitate to contact me at my office (701) 780-8281.

Sincerely,

Peter D. Welte
Grand Forks County State's Attorney
President, North Dakota State's Attorneys Association

House Judiciary Committee
Sixtieth Legislative Assembly of North Dakota
Senate Bill No. 2340
March 6, 2007

Chairman DeKrey and Members of the House Judiciary Committee –

I am David Boeck, a State employee and lawyer for the Protection & Advocacy Project. The Protection & Advocacy Project protects and advocates on behalf of people with disabilities. People with disabilities are disproportionately represented among victims of sex offenders. People with mental illnesses or developmental disabilities are at risk of being misidentified as sexually dangerous.

P&A supports inpatient treatment for sexually dangerous people who have been accurately identified as sexually dangerous. Treatment methods are not yet adequate to support outpatient treatment while preserving public safety.

I will address two primary issues presented by SB 2340, authorizing the Attorney General to pursue commitment of sexually dangerous individuals and the place of juveniles in the system.

A person who is sexually dangerous when sent to prison is a person who will be sexually dangerous when released from prison. Nothing in the corrections system will change that. After all, we have 50 people in the State sex offender treatment program and none of them has yet been "cured" of sexual dangerousness.

You each hear from many constituents when certain sex offenders leave prison, regardless of how long the offenders were imprisoned. People do not understand why certain sexually dangerous individuals return to the community. Many people do not realize that some individuals who commit sex offenses are not sexually dangerous.

In the early years of commitment for sexually dangerous individuals in North Dakota, few individuals were committed for involuntary treatment. State's Attorneys were solely responsible for initiating a commitment process. Many were not comfortable with the process.

Some North Dakota counties rely on part-time State's Attorneys. Part-timers have little opportunity to become expert in commitment of sexually dangerous individuals. Other State's Attorneys' offices are small and assistant state's attorneys there have little opportunity to specialize in anything as narrow as commitment of sexually dangerous individuals. These lawyers seldom see sexually dangerous individuals commit sex crimes in their counties.

It makes sense for the Attorney General to consider a sex offender's need for treatment after a local State's Attorney declines to pursue commitment. The Attorney General's office has lawyers with the most experience in chapter 25-03.3 commitment proceedings. The Attorney General's office can serve as "quality control" in the selection of individuals for chapter 25-03.3 commitment proceedings.

I am not testifying about anything in the fiscal note.

A juvenile who has committed a sex crime is not necessarily a sexually dangerous individual. One P&A Disabilities Advocate told me of a number of children charged with sex offenses. These include one 8-year old, one 10-year old, one 11-year old, two 12-year olds, two 13-year olds, five 14-year olds, and one 16-year old children who have allegedly committed sex offenses.

It is startling for most of us to learn that children so young commit sex offenses. These are North Dakota kids, not kids from drug-infested slums of a decaying city.

Young children in North Dakota who are found to have committed a sex offense fall into the care of the Division of Juvenile Services. The emphasis for them is still rehabilitation. The emphasis for them will continue to be rehabilitation.

Only when these children age out of the juvenile justice system will they fall under the provisions of section 3 of SB 2340, which would amend section 25-03.3-03.1 of the North Dakota Century Code. There will be no referral until the Division of Juvenile Services has exhausted its jurisdiction over the child. Then a State's Attorney or the Attorney General can consider them as candidates for commitment, based on an individual evaluation.

This scenario dismisses the prospect that a young child could be committed to a treatment program for sexually dangerous adults. It would

be horrific if the Division of Juvenile Services did not have jurisdiction over young offenders. A child would have no chance if committed to a residential program constantly surrounded by 50 adult, sexual predators.

I offer just a comment on the venue provisions on line ten of page one of the bill. I agree with the testimony of Sally Holewa, the State Court Administrator. Anyone responding to a petition for commitment should be able to have his trial where he lives, where his support resources can help defend him, where fact witnesses are likely located, where he would be tried for a crime. There is no apparent advantage to justice from having commitment hearings in Jamestown or Bismarck.

Venue for these proceedings should be in Jamestown or Bismarck only if the respondent lives there or is there in custody of the prison or State Hospital.

Thank you for the opportunity to testify in favor of this legislation. Please let me know if you have questions.