



BURLEIGH COUNTY SHERIFF'S DEPARTMENT

KELLY LEBEN
SHERIFF

Testimony Prepared for the

House Judiciary Committee

January 12, 2021

By: Kelly Leben, Sheriff

RE: Supportive Testimony for House Bill 1112 – Prioritization of Admission of Inmates

My name is Kelly Leben and I currently serve as the elected Sheriff of Burleigh County. In addition to my duties as Sheriff, I currently serve as the Jail Administrator for the Burleigh Morton Detention Center (BMDC), which is a jail jointly owned by Burleigh and Morton counties. I testify today in support of House Bill 1112. HB 1112 adds requirements to North Dakota Century Code (NDCC) 54-23.3-11 which is commonly known as the North Dakota Department of Corrections (ND DOCR) Inmate Prioritization Plan. HB 1112 will require ND DOCR to negotiate with local jails and pay costs of housing, to include medical costs, for inmates that are sentenced to the ND DOCR, but left in county jails due to the Prioritization Plan.

The Prioritization Plan was passed during the 2017 legislative session. When this legislation was passed, the informal discussion was that this plan would hopefully never be implemented. On May 6th 2019, Burleigh County was notified by e-mail that the female capacity had been reached at ND DOCR. In accordance with the plan, after 30 days of the quota being met, the plan would be implemented and female inmates would be transferred from the Burleigh Morton Detention Center (BMDC) in accordance with the plan. On May 29th, 2019, the first female inmate of BMDC was refused by ND DOCR. BMDC had female inmates in the Prioritization Plan from that date until September 2019 when the last female inmate was transferred to ND DOCR. As part of the Prioritization Plan, ND DOCR assumed no financial responsibility for inmates sentenced to ND DOCR and all costs became the responsibility of the county from which they were sentenced. During the implementation of the plan, Burleigh County experienced the following:

- 16 female inmates sentenced to ND DOCR remained in BMDC for a total of 172 days with a cost to Burleigh County taxpayers of \$13,500.
- One female inmate was involved in a fight with injuries sustained that required medical attention. Burleigh County incurred medical costs of \$1,403.
- BMDC held inmates for contracting counties that also fell under the Prioritization Plan. BMDC was able to bill the other counties for the cost of housing these inmates.

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Although these numbers by themselves may not seem overly significant, I feel there are some things that are important to consider. During the time the plan was in place for female inmates, we watched the numbers at ND DOCR rising for male inmates. This gave us great concern because female inmates account for a smaller percentage of inmate populations. If the quota was implemented for male inmates, we knew the costs to Burleigh County tax payers would raise considerably. Another factor that gives us concern is that every inmate that is sentenced to ND DOCR, but remains in our jail, takes away an available bed for our county to use to house inmates. Lastly, we were fortunate that the only medical expense we incurred was for injuries sustained in a fight and not medical expenses from a much more serious situation such as a heart attack, cancer, or any other serious medical condition.

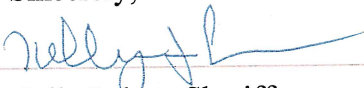
The duties of the Sheriff are spelled out in NDCC 11-15-03. The first three duties of the Sheriff are to preserve the peace, arrest and take before the magistrate all persons who attempt or who have committed a public offense, and to prevent and suppress all affrays and breaches of peace. In addition, North Dakota Administrative Rule 109-02-05-02 requires all peace officers to take an oath to uphold the constitution and law. At the Burleigh County Sheriff's Department (BCSD), we accomplish this through enforcement, education, and discretion. Unfortunately, some violations cannot be solved with education and discretion requiring enforcement action to be taken.

I have stated many times throughout my career that the role of law enforcement is not to create public policy, but rather to carry it out. In the course of our duties, we arrest people that have broken a law created by elected state leaders, bring them before a District Judge for the State of North Dakota, with some of them being sentenced to imprisonment under the North Dakota Department of Corrections. The only way we can control the costs that this plan imposes on our counties is for us to simply not do our duty.

As a jail administrator, I understand the concerns of ND DOCR and fully appreciate that inmate bed space is a limited resource. Unfortunately, at the county level, we cannot just quit accepting prisoners. When ND DOCR quits taking prisoners remanded to their custody, this puts a financial and logistical burden on counties. In a perfect world, we would prefer to not have to house any state inmates we don't enter into a contract to house, but at a minimum, I believe the citizens of Burleigh County should be compensated for those inmates that remain in our jail.

Thank you for your time and consideration and please feel free to contact me with any questions you may have.

Sincerely,



Kelly Leben, Sheriff
Burleigh County