



# BURLEIGH COUNTY SHERIFF'S DEPARTMENT

KELLY LEBEN  
SHERIFF

Testimony Prepared for the  
**House Judiciary Committee**

February 1, 2021

By: Kelly Leben, Sheriff

## **RE: Testimony in Opposition to House Bill 1410 – Inmate Religious Requirements**

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 opposition of House Bill 1410. HB 1410 adds requirements to North Dakota Century Code (NDCC). HB 1410 will require county jails and other entities to comply with additional requirements to religious rights of individuals. I will speak primarily in opposition to the changes to NDCC 12-44.1-14 Inmate Rights, as we believe these changes are unnecessary with existing laws, case law, and established rules.

It is my understanding that HB 1410 is a bill in response to actions taken during the Covid pandemic. I think we can all agree that the pandemic and the response to it, have gone on longer than anyone of us would like. I think we can also agree that our society is divided on the science involving Covid and the actions many government and non-government organizations have taken in response to the illness. I can assure you that every action taken by our department was taken with the understanding of available information processed and how it would affect our staff, the inmates we are responsible, and the citizens we serve. Although Covid will come and go, the ramifications of this bill will be long lasting on our facility.

At the start of the pandemic, our Command staff met on almost a daily basis to discuss the current situation and our response to it. In law enforcement and corrections, we are in the business of mitigating risk and do not take this responsibility lightly. We knew decisions we would be making would affect our inmate population, but we always kept staff and inmate health and well-being in the forefront of our decisions. Prior to Covid, BMDC had a very robust spiritual outreach program for inmates. In addition to outside religious opportunities, we spend \$25,000 annually to ensure we have access to a chaplain of Crisis Care Chaplaincy for staff and inmates of our facility. This program has been well received by our inmate population.

### **COURTHOUSE**

4 E. Thayer • PO Box 1416  
Bismarck, ND 58502-1416  
P 701-222-6651 • F 701-221-6899  
[www.facebook.com/BurleighCountySheriffsDepartment](https://www.facebook.com/BurleighCountySheriffsDepartment)

### **BURLEIGH MORTON DETENTION CENTER**

4000 Apple Creek Road • PO Box 2499  
Bismarck, ND 58502-2499  
P 701-255-3113 • F 701-258-5319

Initially, we cut all outside activity at our facility including spiritual services to reduce the risk of transmission inside our facility. As we cut different programs and services, we worked hard to ensure that we were still providing for inmate needs. In the area of spiritual needs, our chaplain continued to meet with inmates and carried out programs that are in compliance with federal guidelines. Our chaplain also accommodated inmate requests for religious material for all religions recognized by the federal government. In addition, our chaplain provided material and guidance to the inmates on how they could conduct bible studies in their respective cell blocks now that we were unable to bring them together.

Throughout all of the changes we have implemented at BMDC in response to Covid, we have received no complaints from the inmates. Our inmates have questioned what we were doing as we made changes, but time and time again, they have been satisfied with our explanation of the what and why. It is safe for me to say our inmates have been more concerned with making sure we are doing enough to protect them than they have been with how the changes would impact them. Some inmates have even thanked us for caring about their safety. We also have not received any complaints from clergy in regards to the changes we have made affecting their ability to minister to our inmates.

We are constantly monitoring the current threat and making changes as we are able with the ultimate goal of getting back to normal operations. Our current systems have proven to work well in not only providing for our inmates, but in protecting our facility as well. In consultation with our Jail staff, our chaplain, and the Burleigh County States Attorney we have reviewed the language of this bill and have several concerns. Terms such as religion, religious services, and clergy can be exploited. In addition, the term clear and convincing scientific evidence is not defined and is more than just clear and convincing evidence. Lastly, current case law requires an inmate to exhaust all remedies through the inmate grievance procedure prior to filing a lawsuit. This bill will take away that requirement allowing all grievances to be heard in a court of law without trying to resolve it first.

In closing, our current system has worked very well considering what we have gone through over these last months. Because of the decision we have made, we have not had any Covid transmissions inside our facility, which based on other institutions, is a great accomplishment. By protecting our inmates, we have also protected Burleigh County taxpayers who pay for the healthcare costs of these inmates in our facility.

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