

**1999 HOUSE HUMAN SERVICES**

**HB 1304**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1304

House Human Services Committee

Conference Committee

Hearing Date January 19, 1999

Tape Number	Side A	Side B	Meter #
2		X	12.8 - End
3	X		0.0 - 9.8
3		X	15.5 - 25.0
4		X	24.5 - End
Committee Clerk Signature <i>Susann Lindteigen</i>			

Minutes:

Rep. LAUREL THORESON, District 13, introduced the bill. It does three things: (1) changes housing of inmates by behavior, (2) changes amount of assessment to actual cost; and (3) placement of an inmate for minimum security facility. It was introduced because of problems in Cass County.

ALAN WEILAND, Cass County Commission, testified for BONNIE JOHNSON. (Testimony attached)

JIM THORESON, Cass County, stated we separate inmates based on behavior. Some concerns are: (1) deletes \$10.00 and put in actual cost per day based on earnings on work release; and (2) minimum sentence guidelines.

Rep. TODD PORTER asked is it \$30-\$35 per day to provide these services?

JIM THORESON said yes. Rep. TODD PORTER asked is there a mandated dollar amount to be paid to the inmate. JIM THORESON stated yes, minimum wage.

TESTIMONY IN OPPOSITION

MARCIE CONMY-FISHER, Administrator, Stutsman County Correction Center, testified in opposition to some parts and in agreement to other parts. I'm in opposition to changing the classification system. There are problems with housing sentenced and pre-sentenced inmates together, i.e. 18 year old as compared to seasoned inmate. I have no problem with work release fees.

Rep. WILLIAM DEVLIN asked what kind of work release programs pay \$30 per hour?

MARCIE CONMY-FISHER stated we have had seismographic or construction workers that earn a lot of money.

Rep. CAROL NIEMEIER asked how easy is it to assess classification of workers. MARCIE CONMY-FISHER stated initially you can't. Some observe inmates during a 2-3 week orientation.

Rep. CLARA SUE PRICE asked would you be in favor of the option to house by behavior?

MARCIE CONMY-FISHER stated it works now with the way statute is written.

Rep. WILLIAM DEVLIN asked why remove sections 3 and 4, if you have flexibility now?

JIM THORESON stated that is correct. I ask, is there a need to have it in if we house them together all the time. If it's not enforced, is it necessary? Rep. WILLIAM DEVLIN asked for an explanation. JIM THORESON stated there may be a liability issue in regard to the exception of certain situations. A lawyer would better answer that question.

STEVEN ENGEN, Training Director, ND Department of Corrections, testified they are the agency responsible to draft jail rules and inspection of correctional facilities. I do not oppose Sections 2 and 3 of the bill. Our current classification system is based on objective criteria. Separation categories are: inmates awaiting transport, convicted or sentenced, awaiting sentence, pretrial, witnesses, contempt, civil commitments, detoxification, communicable diseases, or vulnerable inmates. We do this to separate predatory inmates from non-predatory. Current statute allows separation.

Rep. TODD PORTER asked about potential liability. STEVEN ENGEN stated that there may be a pretrial inmate where we don't know the inmate's background. They would be placed in general population with those who may be predatory.

KEN SORENSON, Assistant Attorney General, testified (Testimony attached). These standards were adopted in 1979, with a rewrite in 1997. We would like to keep these because of constitutional component. Decision of classification separation system, whether subjective or objective, needs to be made. Present statutory system does allow flexibility. The point is, regardless of the system we have, amendment of the bill, Cass County or any other facility, they will need a classification system that recognizes the various categories of inmates.

Committee discussion.

Rep. BLAIR THORESON moved to ADOPT AMENDMENTS.

Rep. AMY KLINISKE second the motion.

VOICE VOTE: 15 yeas, 0 nays, 0 absent

Rep. BLAIR THORESON moved a DO PASS AS AMENDED

Rep. SALLY SANDVIG second the motion.

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House Human Services Committee

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Further Committee discussion

Rep. BLAIR THORESON stated the Cass County Sheriff requested this bill.

Rep. CAROL NIEMEIER asked about minimum security people housed in the same facility?

Rep. BLAIR THORESON stated he wasn't certain. He would contact Cass County.

No Action on motion.

Rep. BLAIR THORESON stated Ken Sorenson, Assistant Attorney General wanted to check with Cass County.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1304

House Human Services Committee

Conference Committee

Hearing Date January 25, 1999

Tape Number	Side A	Side B	Meter #
2	X		17.0 - 30.0
Committee Clerk Signature <i>Susann Lindteigen</i>			

Minutes:

Rep. BLAIR THORESON stated Cass County, Department of Corrections, and Stutsman County agree to proposed amendment to put Section 1 back in.

Rep. BRUCE ECKRE asked if it was okay with the Department of Corrections? Rep. BLAIR THORESON said it was okay.

Rep. BLAIR THORESON moved to reinstate Section 1 to the Amendment.

Rep. AMY KLINISKE second the motion.

Voice Vote: Unanimous 15 yeas, 0 nays, 0 absent

Committee Discussion:

Rep. SALLY SANDVIG asked about the liability issue and Rep. BLAIR THORESON responded.

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House Human Services Committee

Bill/Resolution Number HB 1304

Hearing Date January 25, 1999

Rep. BLAIR THORESON moved DO PASS AS AMENDED.

Rep. TODD PORTER second the motion.

Further Commission Discussion

Rep. ROXANNE JENSEN raised the issue of administrative discretion on daily work rate reimbursement.

Rep. BLAIR THORESON stated Cass County inmate may make \$35/day, inmate is charged \$10/day, and the County pays the remaining \$25/day.

Rep. CLARA SUE PRICE said a rate needs to be established because sometimes counties house prisoners from other counties.

Rep. ROXANNE JENSEN asked about having a sliding rate scale.

Rep. ROBIN WEISZ stated the bill says if inmate makes more money, they will take out what he makes until he reaches the base rate.

Rep. WILLIAM DEVLIN said Rep. ROBIN WEISZ covered it and to remember they are talking about minimum security inmates.

Rep. ROXANNE JENSEN said my standpoint is that rehabilitation needs to be a consideration.

ROLL CALL VOTE #3: 15 yeas, 0 nays, 0 absent

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: \_\_\_\_\_ Amendment to: Eng. HB 1304

Requested by Legislative Council \_\_\_\_\_ Date of Request: 3-30-99

- 1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

The amendments relating to inmates in county jails paying a portion of their room and board will fiscally affect each jail differently, but the impact will not be significant.

The Attorney General's office has advised the department that the amendment relating to the classification of inmates and how inmates are housed will have no fiscal impact.

- 2. State fiscal effect in dollar amounts:

1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds

Revenues:

Expenditures:

- 3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: None.
- b. For the 1999-2001 biennium: None.
- c. For the 2001-03 biennium: None.

- 4. County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0			\$0			\$0		

If additional space is needed, attach a supplemental sheet.

Signed Elaine Little

Typed Name ELAINE LITTLE

Department Dept of Corrections & Rehabilitation

Phone Number 328-6390

Date Prepared: 4/1/99



FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: \_\_\_\_\_ Amendment to: HB 1304

Requested by Legislative Council \_\_\_\_\_ Date of Request: 1/28/99

- 1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

The proposed amendment to HB1304 will not have a fiscal impact on the county correctional facilities. A number of facilities already have a classification system for inmates. Adoption of a classification system by other facilities could be accomplished with current staff.

- 2. State fiscal effect in dollar amounts:

Table with 7 columns: 1997-99 Biennium (General Fund, Special Funds), 1999-2001 Biennium (General Fund, Special Funds), 2001-03 Biennium (General Fund, Special Funds). Rows: Revenues, Expenditures. All values are \$0.

- 3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: None.
b. For the 1999-2001 biennium: None.
c. For the 2001-03 biennium: None.

- 4. County, City, and School District fiscal effect in dollar amounts:

Table with 9 columns: 1997-99 Biennium (Counties, Cities, School Districts), 1999-2001 Biennium (Counties, Cities, School Districts), 2001-03 Biennium (Counties, Cities, School Districts). All values are \$0.

If additional space is needed, attach a supplemental sheet.

Signed Elaine Little

Typed Name ELAINE LITTLE, DIRECTOR

Department CORRECTIONS AND REHABILITATION

Phone Number 328-6616

Date Prepared: 1/28/99

**FISCAL NOTE**

(Return original and 10 copies)

Bill/Resolution No.: HB 1304 Amendment to: \_\_\_\_\_

Requested by Legislative Council Date of Request: 1-13-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

**Narrative:**

This bill relates to county jails and therefore does not affect the State General Fund. It is unknown what fiscal impact this bill might have on counties.

2. State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:	\$0	Unknown	\$0	Unknown	\$0	Unknown
Expenditures:	\$0	Unknown	\$0	Unknown	\$0	Unknown

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: None.
- b. For the 1999-2001 biennium: None.
- c. For the 2001-03 biennium: None.

4. County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
Unknown	\$0	\$0	Unknown	\$0	\$0	Unknown	\$0	\$0

If additional space is needed, attach a supplemental sheet.

Signed *Elaine Little*

Typed Name Elaine Little

Date Prepared: 1-15-99

Department Corrections & Rehabilitation

Phone Number 328-6616

1304

Date: 1-19-99  
Roll Call Vote #: 3

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1304

House Human Services Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken No Pass As Amended

Motion Made By Blair Thoreson Seconded By Sally Sandvig

*No Action*

Representatives	Yes	No	Representatives	Yes	No
Clara Sue Price - Chairwoman			Bruce A. Eckre		
Robin Weisz - Vice Chairwoman			Ralph Metcalf		
William R. Devlin			Carol A. Niemeier		
Pat Galvin			Wanda Rose		
Dale L. Henegar			Sally M. Sandvig		
Roxanne Jensen					
Amy N. Kliniske					
Chet Pollert					
Todd Porter					
Blair Thoreson					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Fifty-Sixth  
Legislative Assembly  
of North Dakota

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1304**

Page 1, line 7, insert after "**Housing of inmates.**" A correctional facility shall adopt a classification system for inmates to provide for the security, safety, and order of the correctional facility and for the safety and security of the community. Unless the correctional facility has adopted a classification system approved by the department of corrections and rehabilitation, the correctional facility shall comply with the classification system set forth in this section.

Page 1, remove the overstrike over lines 12 through 17

Page 1, line 18, remove the overstrike over "5"

Renumber accordingly

VK  
1/24/99

HOUSE AMENDMENTS TO HOUSE BILL NO. 1304 HUMANSERVICES 1-26-99

Page 1, line 7, after the third period insert "Each correctional facility shall adopt a classification system for inmates to provide for the security, safety, and order of the correctional facility and for the safety and security of the community. If the correctional facility has adopted a classification system approved by the department of corrections and rehabilitation, the correctional facility is not required to comply with the classification system required in this section."

Page 1, line 12, remove the overstrike over "~~Persons detained for hearing or trial from inmates under sentence of~~"

Page 1, remove the overstrike over lines 13 through 17

Page 1, line 18, remove the overstrike over "5."

Renumber accordingly

Date: 1-25-99  
Roll Call Vote #: 3

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1304

House Human Services Committee

- Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number 90468.0101

Action Taken Do Pass as Amended

Motion Made By Blair Thoreson Seconded By Todd Porter

Representatives	Yes	No	Representatives	Yes	No
Clara Sue Price - Chairwoman	X		Bruce A. Eckre	X	
Robin Weisz - Vice Chairwoman	X		Ralph Metcalf	X	
William R. Devlin	X		Carol A. Niemeier	X	
Pat Galvin	X		Wanda Rose	X	
Dale L. Henegar	X		Sally M. Sandvig	X	
Roxanne Jensen	X				
Amy N. Kliniske	X				
Chet Pollert	X				
Todd Porter	X				
Blair Thoreson	X				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Thoreson

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

**REPORT OF STANDING COMMITTEE**

**HB 1304: Human Services Committee (Rep. Price, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1304 was placed on the Sixth order on the calendar.

Page 1, line 7, after the third period insert "Each correctional facility shall adopt a classification system for inmates to provide for the security, safety, and order of the correctional facility and for the safety and security of the community. If the correctional facility has adopted a classification system approved by the department of corrections and rehabilitation, the correctional facility is not required to comply with the classification system required in this section."

Page 1, line 12, remove the overstrike over "~~Persons detained for hearing or trial from inmates under sentence of~~"

Page 1, remove the overstrike over lines 13 through 17

Page 1, line 18, remove the overstrike over "5:"

Renumber accordingly

**1999 SENATE GOVERNMENT AND VETERANS AFFAIRS**

**HB 1304**



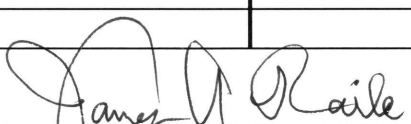
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1304

Senate Government and Veterans Affairs Committee

Conference Committee

Hearing Date March 18, 1999

Tape Number	Side A	Side B	Meter #
1	X		0-2575
Committee Clerk Signature 			

Minutes: CHAIRMAN KREBSBACH called the committee to order. The clerk was instructed to call the roll. The hearing was opened on HB 1304 which relates to inmate placement and programs. Appearing before the committee was REPRESENTATIVE LOWELL THORESON, District 13, West Fargo, primary sponsor of the bill. HB 1304 is a bill that started out because the Fargo system had a concern about housing of prisoners in the jail system and they are in the process of building a new jail and they wanted to clarify some things as to how those prisoners would be housed so that when they went into the process it would be a more efficient process. Hence the bill. There are a couple of other things in the bill that have to do with the actual cost of housing a prisoner and also placing them in a minimum security facility which would be a halfway house, that kind of thing. Basically it was amended in the house to clarify that the housing of the inmates would be approved by the department of corrections. That seems to improve the bill. That is what is before you and I would be willing to answer any questions from

the committee. SENATOR THANE inquired about the two fiscal notes that are attached to the bill. One is developed around the amendments, the other around the original bill. I'm always distressed when I see the unknown impact on counties. Maybe somebody could clear that up if there is going to be an impact on counties of Cass or any other counties for that matter. I'm curious if somebody has an answer better than an unknown. CHAIRMAN KREBSBACH indicated that for quick information, the original fiscal note was the unknown, the updated one and I'm sure that was after the house amendment, it is zero. REPRESENTATIVE THORESON indicated that he thought the unknown was if there would be a cost in the classification part of it and that is no longer, basically no longer an issue. SENATOR W. STENEHJEM, I was the sponsor of the bill some years ago that prohibited the jailing of juveniles with adults. Now I see that the house has amended this bill in such a way that these facilities can adopt rules that would allow juveniles and adults to be jailed together. REPRESENTATIVE THORESON, and I think the main part of that would be that it has to be approved by the Department of Corrections. I would suspect that there is no intent to do that as far as housing them. I think the main concern was whether we would be able to house prisoners that were already sentenced in North Dakota or were waiting for sentencing. SENATOR W. STENEHJEM that's why I'm wondering why they don't say that they are exempt for sections 3, 4, and 5 but not 1 and 2? REPRESENTATIVE THORESON, Senator, I suspect it could be further amended if that were appropriate. There were no further questions at this time. Appearing before the committee was JIM THORESON, Chief Deputy with the Cass County Sheriffs office. The purpose of this legislation is basically three fold, first to allow correctional facilities more latitude in classification of inmates. Under this proposed bill it would allow us to adopt a classification system approved by the department

of corrections which in certain cases would allow us to house inmates based on behavior rather than the traditional pretrial, post trial segregation. Secondly the legislation allows for an increase in room and board costs for work release inmates from the \$10.00 currently to the actual costs of incarceration. Thirdly it allows for convicted DUI offenders, to serve their mandatory sentence at a halfway house or treatment facility as opposed to a jail facility. They could receive treatment while serving their mandatory sentence. SENATOR STENEHJEM, when you are talking about the meal and lodging cost, is that the \$54.00 per day or whatever it is that we pay or whatever is the cost? JIM THORESON, yes, it would be the actual cost of incarceration. The reason for that is that we allow work release inmates to be housed for example at Center incorporated or Share House so that they would pay those costs to be housed there while they are on work release. SENATOR STENEHJEM, In Grand Forks, typically the inmates who are on work release are in the jail and they out and work during the day and come back in at night. Now would they have to pay that whole cost? JIM THORESON, Yes they would incur up to the actual cost or the cost of earnings, whichever is less. SENATOR STENEHJEM, then it defeats the purpose of work release doesn't it? If they are going to take the whole thing away from them? JIM THORESON, one can look at it that way. The other side of it would be one of the purposes of work release is to keep these people employed with the employer they had prior to coming into the jail facilities. SENATOR STENEHJEM, I'm sure that's one of the purposes, the other one is so that they can feed their family and pay their bills. JIM THORESON one of the questions earlier that deals with classification with juveniles. There certainly is no intent here at all. The major intent on this behavior classification is that those who are a problem can be housed together regardless of their pretrial or post trial status. SENATOR DEMERS, I'm not

sure on what these classifications mean? You are talking about in grade one and grade two facilities and where possible in grade three facilities. Can you run through that for me? JIM THORESON, I'm not an expert on the different classifications of jails, I know that it has to do with the length of time that person can be held in that facility. Exactly what the breakdown is, I couldn't tell you. I know in our facility we can house them for up to a year. SENATOR

KREBSBACH perhaps there is someone who can explain these various classifications to us.

SENATOR KILZER, What is the average amount of funds earned by an inmate on a work release program? JIM THORESON, I don't have an average figure for them. Some are obviously working at minimum wage and some are working in the professional sector serving a mandatory sentence for DUI and maybe making a very handsome salary. What the average would be would probably be on the lower end. SENATOR DEMERS indicated that she had

some information for the committee. Grade one facilities are not more than one year, grade two not more than ninety days, and grade three not more than 96 hours. KEN SORENSON,

Assistant Attorney General appeared before the committee. A copy of his written testimony is attached. SENATOR W. STENEHJEM, Ken do agree with me that perhaps the bill should be

amended to say that if the correctional facility has adopted a classification system approved by the department. The correctional facility is not required to comply with the classification system

required in subsections 3, 4, and 5. MR. SORENSON, that might be a better way of looking at it. At the time we did it we were trying to get something that would work. I would have no

problem with that. SENATOR THANE, in the second paragraph down there is the word

contemners. What does that mean? MR. SORENSON, a person who has been held in contempt by the court. It might be a child support matter, it might be a testimonial matter, it might be the

judges honor has been insulted. It is somebody who has been placed in custody and is not really a criminal. SENATOR KREBSBACH, so as I am looking at this, on line 15 and 16 female inmates from male inmates and within female inmates you have various classifications. MR. SORENSON, that is so. SENATOR KREBSBACH, and that is the same with male inmates and juveniles? MR. SORENSON, yes but it can be a very complex process. Typically with all of the objective criteria there is a very strong subjective component also. There were no further questions from the committee. TERRY TRAYNOR with the Association of Counties appeared before the committee and indicated that his organization supports the bill. He also indicates that they would support the amendments for clarity to the bill. SENATOR KREBSBACH, Mr. Traynor, were most of the departments contacted, or are they aware of it? DICK PECK representing the North Dakota Peace Officers, indicated that his organization supports the bill because it gives the facilities greater flexibility in housing inmates. He indicated that he would support the amendments proposed by SENATOR STENEHJEM. SENATOR STENEHJEM inquired about the actual cost per day of the Burleigh County Correctional Facility? MR. PECK, I think our costs right now are \$35.00 per day. SENATOR KILZER inquired about the work release program and funds earned. MR. SORENSON indicated it wasn't the intent when this was put in to take the entire earnings of that particular inmate for that particular day for the housing costs of the jail facility. The problem is with a set dollar amount, if you have someone who's making a good wage out in the community that doesn't amount to a whole lot for them whereas if you have someone who is making minimum wage it would be substantial. I think the thought here was that it could be not a set figure but based on income perhaps. SENATOR KILZER, would it make sense to have a certain percentage? Like the inmate would get to keep a

minimum of 25% of what he earns? MR. SORENSON, I think that would be a great idea and my thought would be that perhaps he or she should keep maybe 60% of their earnings, maybe 40% would go to the jail. One of the problems we run into is when we place someone in a halfway house and they pay \$10.00 the balance is paid by the county and I think that was the reason for this. SENATOR KREBSBACH, how long has it been at the \$10.00 fee? MR. SORENSON, many years, perhaps six or seven sessions ago something like that. SENATOR STENEHJEM once again reiterated his thoughts on the need for amending this section. There was no further discussion at this time. CHAIRMAN KREBSBACH closed the hearing on HB 1304.

**COMMITTEE DISCUSSION, March 25, 1999, Tape 1, Side B, Meter #'s 1995-2240**

**CHAIRMAN KREBSBACH indicated that SENATOR STENEHJEM had some concerns with this bill concerning inmate placements. He indicated that he had problems with any juveniles being placed with adults and any women inmates being placed with male inmates. He indicated that he had spoken with Terry Traynor and he was to have prepared amendments for the committee. The clerk indicated that he had not received any amendments from anyone on this bill. SENATOR STENEHJEM indicated that he checked with the folks from Fargo and some of the jail people and what they want is it is not necessary to increase the costs for staying in the correctional facility but for cases where people are farmed out to halfway houses and things like that residential facilities, they would have to pay all of that, that's what they are doing now, paying for those expenses and they should. He did an amendment to provide for that and also raise the amount that they could charge from \$10. to \$15. CHAIRMAN KREBSBACH, and that is**

all on page 2 lines 10 and 11. And that's the only amendments. It was decided to hold on this bill. The committee would discuss it again tomorrow.

*COMMITTEE ACTION/DISCUSSION, March 26, 1999, Tape 1, Side A, Meter #'s 3004-3795*

*CHAIRMAN KREBSBACH commented that this was the final bill of the session for the Government and Veteran's Affairs Committee unless there would be a delayed bill which would need to be heard and acted upon. She indicated that SENATOR STENEHJEM had some amendments drafted to take care of concerns on this bill. SENATOR STENEHJEM indicated what these amendments do, I talked to the people from the counties, the association of counties, and contacted the jail people in Cass County and determined what they really wanted to do with the bill. What they really wanted to do with the bill is to provide when a person, they didn't care about raising the amount that a person pays on work release in the jail, but they were concerned about the expenses when someone's in a residential halfway house, and that's where the person should pay the full expense up to the amount of what they earn in a day, and not the county pay these residential programs. The amendments change the bill to say that the amount paid by the inmates while placed in a residential halfway house or similar alternative facility may not exceed the actual cost per day or funds earned by the inmate, whichever is less. Then it amends the amount they can charge for people who are in jail from ten to fifteen dollars. We looked at the possibility of going with a percentage of the inmates income but that winds up making the jail administrator an accountant and he has to look over the pay stubs and all of those kinds of things and would cause more problems. So, we settled on fifteen dollars. Why that, because I think that is what they are charging in Grand Forks County. The other thing was, the first section of the bill allows an exception*

*from the requirements of subsections one through five if they have a policy in effect. I didn't have any problems with sections three, four, and five, but I don't think we should ever allow jailing of female inmates with male inmates or juveniles together with adults. So, the very first line simply says that they are exempt from the classification system required in subsections three, four, and five. CHAIRMAN KREBSBACH, you're taking out the classification system and replacing it with subsections three, four, or five. SENATOR STENEHJEM, what it will say is if the correctional facility has adopted a classification system approved by the department of corrections and rehabilitation, the correctional facility is not required to comply with the classification system required in subsections three, four, and five. CHAIRMAN KREBSBACH, but the amendments that replace the classification system required within with subsections three, four, and five. There was no further discussion at this time. SENATOR STENEHJEM moved to adopt the amendments, seconded by SENATOR WARDNER. ROLL CALL VOTE indicated 7 Yeas, 0 Nays, 0 Absent or Not Voting. A motion for DO PASS AS AMENDED was made by SENATOR STENEHJEM, seconded by SENATOR DEMERS. ROLL CALL VOTE indicated 7 Yeas, 0 Nays, 0 Absent or Not Voting. SENATOR W. STENEHJEM will carry the bill.*



PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1304

Page 1, line 11, replace "the classification system required in" with "subsections 3, 4, and 5 of"

Page 2, line 9, after "facility" insert ", residential halfway house, or similar alternative facility"

Page 2, line 10, after "amount" insert "to be paid by the inmate while confined in a correctional facility", after "~~ten~~" insert "fifteen", remove the overstrike over "~~dollars~~", and remove "the actual cost"

Page 2, line 11, after the period insert "The amount to be paid by the inmate while placed in a residential halfway house or similar alternative facility may not exceed the actual cost per day or the funds earned by the inmate, whichever is less."

Renumber accordingly

Date: 3/26/99  
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1304

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Adopt Amendments . 0202

Motion Made By Sen Stenehjem Seconded By sen. Wardner

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH	✓				
SENATOR WARDNER	✓				
SENATOR KILZER	✓				
SENATOR STENEHJEM	✓				
SENATOR THANE	✓				
SENATOR DEMERS	✓				
SENATOR MUTZENBERGER	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

Date: 3/26/99  
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1304

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

- Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as Amended

Motion Made By Sen. Stenehjem Seconded By Sen. Demers

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH	✓				
SENATOR WARDNER	✓				
SENATOR KILZER	✓				
SENATOR STENEHJEM	✓				
SENATOR THANE	✓				
SENATOR DEMERS	✓				
SENATOR MUTZENBERGER	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Stenehjem

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

**REPORT OF STANDING COMMITTEE**

**HB 1304, as engrossed: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1304 was placed on the Sixth order on the calendar.

Page 1, line 11, replace "the classification system required in" with "subsections 3, 4, and 5 of"

Page 2, line 9, after "facility" insert ", residential halfway house, or similar alternative facility"

Page 2, line 10, after "amount" insert "to be paid by the inmate while confined in a correctional facility", after "~~ten~~" insert "fifteen", remove the overstrike over "~~dollars~~", and remove "the actual cost"

Page 2, line 11, after the period insert "The amount to be paid by the inmate while placed in a residential halfway house or similar alternative facility may not exceed the actual cost per day or the funds earned by the inmate, whichever is less."

Renumber accordingly

**1999 HOUSE HUMAN SERVICES**

**HB 1304**

**CONFERENCE COMMITTEE**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1304

House Human Services Committee

Conference Committee

Hearing Date April 6, 1999

Tape Number	Side A	Side B	Meter #
3	x		0.0-end
Committee Clerk Signature <i>Wayne Stenehjem</i>			

Minutes:

The meeting was called to order by Rep. WILLIAM DEVLIN. Also present were Reps. BLAIR THORESON, RALPH METCALF, Sens. WAYNE STENEHJEM, RUSSELL THANE, MARV MUTZENBERGER.

Rep. DEVLIN noted that the two areas had been cleared up. The fiscal note has come back as zero dollars and the concern about housing convicted prisoners with prisoners who had not been convicted. The Attorney General's office does not think this is a problem. The only concern remaining to be resolved is the change of actual cost to \$15 per day by the senate amendments. Sen. STENEHJEM noted that testimony indicated that county officials wanted to recover full cost from people who are sentenced to a half way house or some other form of rehabilitation, not for people in jail. They increased the daily cost from \$10 to \$15 because it seemed reasonable.

Page 2

House Human Services Committee

Bill/Resolution Number 1304apr06

Hearing Date April 6, 1999

Rep. DEVLIN noted that in house committee testimony it was stated that some prisoners in Cass County could make up to \$35 per day and didn't think that jail time should be a profit making venture. It was noted, however, that Cass County officials were comfortable with the wording of the Senate amendments.

Sen. STENEHJEM moved that THE HOUSE ACCEDE TO THE SENATE AMENDMENTS TO HOUSE BILL 1304. Seconded by Sen. THANE.

The motion PASSED unanimously on a roll call vote.

Meeting adjourned.

(Bill Number) HB 1304 (~~as~~ engrossed):

Your Conference Committee

For the Senate:	Present	Vote	For the House:	Present	Vote
<u>W. Stenehjem</u>	Y	Y	<u>Devlin</u>	Y	Y
<u>Thane</u>	Y	Y	<u>B. Thoreson</u>	Y	Y
<u>Mutzenberger</u>	Y	Y	<u>Metcalf</u>	Y	Y

recommends that the (~~SENATE~~ HOUSE) (ACCEDE to) (~~RECEDE from~~)  
723/724      723/726      S724/H726      S723/H725  
 the (~~Senate~~ House) amendments on (SJ/HJ) page(s) 1071 - 1072

and place HB 1304 on the Seventh order.  
727

, adopt (further) amendments as follows, and place \_\_\_\_\_ on the Seventh order:

having been unable to agree, recommends that the committee be discharged and a new committee be appointed. 690/515

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_  
 CARRIER: \_\_\_\_\_  
 LC NO. \_\_\_\_\_ of amendment  
 LC NO. \_\_\_\_\_ of engrossment  
 Emergency clause added or deleted \_\_\_\_\_  
 Statement of purpose of amendment \_\_\_\_\_

(1) LC (2) LC (3) DESK (4) COMM.



Insert LC: .

**REPORT OF CONFERENCE COMMITTEE**

**HB 1304, as engrossed:** Your conference committee (Sens. W. Stenehjem, Thane, Mutzenberger and Reps. Devlin, B. Thoreson, Metcalf) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ pages 1071-1072 and place HB 1304 on the Seventh order.

Engrossed HB 1304 was placed on the Seventh order of business on the calendar.

**1999 TESTIMONY**

**HB 1304**



M E M O

TO: Human Service Committee Members  
FROM: Bonnie Johnson  
DATE: January 15, 1999  
SUBJECT: HB1304

County  
Coordinator

Bonnie Johnson

-----  
On Tuesday, your committee will be hearing testimony on HB1304 concerning changes in State statutes dealing with the classification of jail prisoners, raising fees for work release inmates from the current \$10 to actual costs, and utilization of minimum security facilities.

The Cass County Jail is currently 85 years old and voters will be asked to approve a new facility in April, 1999. Because the price tag will be somewhere between \$18 and \$20 million, it is important the county do everything possible, when planning the new facility, to maximize the projected bed capacities, and to utilize community resources for reducing jail populations. Therefore, instead of having to build an over-sized jail for the future, we can follow the lead of other counties and states all around America by classifying inmates by behavior instead of by the status of their sentence.

Your committee may find that many counties do not have a position on this legislation. First, many counties do not have jails, and second, those who do are not experiencing the growth and overcrowding that we have in our jail. Even if the committee wants to make this legislation optional for counties, Cass County would find that acceptable. These changes could then be implemented in larger counties as the need arises.

Chief Deputy, Jim Thoreson, of the Cass County Sheriff's Department will be present at the hearing to give testimony and answer questions about this proposed legislation. I appreciate your attention and support of this very important issue.

cc Cass County Commissioners  
Sheriff Don Rudnick  
Representative Laurel Thoreson  
Representative Darrell Nottestad  
Representative Mary Ekstrom  
Senator Judy Lee

Box 2806  
211 Ninth Street South  
 Fargo, North Dakota 58108

701-241-5720  
FAX 701-241-5728

MEMORANDUM

**TO:** Chairman Price, Members of the House Human Services Committee

**FROM:** Ken Sorenson, Assistant Attorney General

**DATE:** January 25, 1999

**SUBJECT:** Proposed Amendments to House Bill No. 1304

Attached is a proposed amendment to House Bill No. 1304. The proposed amendment is submitted on behalf of the North Dakota Department of Corrections and Rehabilitation, which has oversight, inspection, and rule-making authority over local and regional correctional facilities, including the construction and operation of such facilities, pursuant to N.D.C.C. chapter 12-44.1.

The Department of Corrections and Rehabilitation feels that it is necessary that N.D.C.C. chapter 12-44.1 require a classification system for the local and regional correctional facilities in the state. A classification system is necessary to assure the safety and security of correctional facility staff, the persons confined, any other persons such as visitors, clergy, and professional persons who may be in the facility, and for the safety and security of the community. The proposed amendment to HB 1304 will continue with the current statutory classification system by maintaining the current statutory language. This is necessary to make sure that correctional facilities who have not enacted any formal classification system will continue to be subject to some basic criteria for the classification and appropriate treatment of the different types of persons who may be confined in the facility. The Department of Corrections and Rehabilitation recognizes that the current statutory system, while allowing some latitude for correctional facilities to make particular decisions about particular types of inmates based on legitimate penological interests, may presents to some extent a "one-size fits all" requirement that may not always be a good fit for every correctional facility, particularly considering the scale of the proposed Cass County correctional facility. The proposed amendment still requires each correctional facility to classify its inmates. However, the proposed amendment will allow a correctional facility to establish a classification system that may vary from the statute, provided it works with the Department of Corrections and Rehabilitation in developing the classification system. In this fashion, either way the facility will have a classification system that does what it is supposed to do, namely provide for a safe and secure facility.

It is my understanding that Cass County officials have reviewed the Department's proposed amendment and they think they can work with the Department on their proposed facility and so the amendment is acceptable to them.

If the committee has any questions, my direct extension is 8-4847. Thank you.

cc: Elaine Little, Director, Department of Corrections and Rehabilitation

Fifty-sixth  
Legislative Assembly  
of North Dakota

**ENGROSSED HOUSE BILL NO. 1304**

Before the Senate Government and Veterans Affairs Committee  
March 18, 1999

Chairman Krebsbach and members of the Senate Government and Veterans Affairs Committee:

My name is Ken Sorenson, Assistant Attorney General, and I am submitting this written testimony on behalf of the North Dakota Department of Corrections and Rehabilitation (DOCR), which pursuant to N.D.C.C. chap. 12-44.1, has regulatory and inspection authority over local and regional adult correctional facilities and juvenile detention centers.

Section 1 of Engrossed House Bill No. 1304 amends N.D.C.C. § 12-44.1-09 relating to the classification of inmates in local correctional facilities. When this bill was originally introduced, Section One would have amended N.D.C.C. § 12-44.1-09 by removing the requirement that pretrial detainees, persons otherwise detained by order of the court, and convicted persons be housed separately from each other. Section One of the bill was submitted at the request of Cass County, which is presently in the planning stages of building a large correctional facility. The reason Cass County sought the amendment was that its proposed design contemplated a different classification system than what was allowed under the statute, namely that Cass County was looking at a subjective behavior classification system as opposed to the relatively basic objective classification system of N.D.C.C. § 12-44.1-09. The DOCR was concerned about the possible effect on the administration of correctional facilities around the state if the current statutory classification requirements were removed. The DOCR opposed Section 1 of the bill as originally drafted and submitted an amendment that would maintain the statutory classification requirements, but allow a facility to develop its own classification system, subject to the approval of the DOCR pursuant to its regulatory and inspection authority. The DOCR's proposed amendment to Section 1 was adopted by the House and became a part of Engrossed House Bill No. 1304.

Classification is a process for evaluating and categorizing prisoners to determine, among many considerations, the extent to which each prisoner may present risk to the safety and health of the correctional facility staff and other inmates, the security of the correctional facility and the community, the extent that the inmate may be at risk from other inmates, and also the extent the inmate may present a risk to his or her own safety.

A person may be held in a local correctional facility for a number of reasons. Many of the persons incarcerated have been convicted of a crime and may be serving a sentence or waiting transport to a different correctional facility such as a state or federal penitentiary. Persons may be also be incarcerated as pre-trial detainees

pending posting of bond or to otherwise assure their presence at trial or for extradition to another jurisdiction. In addition to persons being held as defendants in criminal proceedings, a person may be a witness in protective custody or is detained to assure the witness's presence at trial. Other reasons a person may be incarcerated include contempt, civil commitment proceedings, detoxification, and probation or parole revocation proceedings.

Current North Dakota statutory law requires separation of various classifications of inmates. N.D.C.C. § 12-44.1-09(3) requires that in grade one and grade two facilities, and where practicable, in grade three facilities, persons detained for hearing or trial must be kept separate from inmates under sentence of imprisonment, unless authorized to be housed together by the administrator for security, order, or rehabilitation. N.D.C.C. § 12-44.1-09(1) requires that female inmates must be separated from male inmates. N.D.C.C. § 12-44.1-09(2) requires that juveniles must be separated from adults. N.D.C.C. § 12-44.1-09(4) requires separation of persons otherwise ordered detained by the court (e.g. witnesses in protective custody or detained to assure their appearance in court, contemnors, and persons undergoing civil commitment). Finally, N.D.C.C. § 12-44.1-09(5) requires separation of inmates who may have special needs or whose behavior may present a serious threat to the safety or security of the correctional facility, the staff, the inmate, or other inmates.

As a matter of constitutional law, there is no requirement or preference that correctional facilities adopt one type of classification system over another. However, the courts have consistently held that correctional facilities have an obligation to take reasonable measures to guarantee the safety of inmates. Thus, even though there are no express constitutional classification requirements, the lack of a classification system may lead to constitutional violations and so it is generally recognized that classification of prisoners is an important aid to reducing correctional facility vulnerability to litigation.

The DOCR feels that it is necessary to maintain the current classification requirements of N.D.C.C. § 12-44.1-09 for the local and regional correctional facilities in the state. Section 1 of Engrossed House Bill No. 1304 will continue with the current statutory classification system by maintaining the current statutory language. This is necessary to make sure that local or regional correctional facilities that have not enacted any formal classification system will continue to be subject to some basic criteria for the classification and appropriate treatment of the different types of persons who may be confined in the facility. The DOCR recognizes that the current statutory system, while allowing some latitude for correctional facilities to make particular decisions about particular types of inmates based on legitimate penological interests, may also present to some extent a "one-size fits all" requirement that for some correctional facilities may not always provide the right fit, particularly considering the scale of the proposed Cass County correctional facility. Section 1 of Engrossed House Bill No. 1304 still requires each correctional facility to classify its inmates. However, the proposed amendment will allow a correctional facility to establish a classification system that may vary from the statute, provided the correctional facility works with the Department of Corrections and Rehabilitation in developing and justifying the classification system.

A classification process that uses appropriate criteria and information will assist correctional facility staff in identifying various factors to determine housing or cell assignments and appropriate levels of supervision. These factors include:

Whether the inmate is predatory, whether the inmate presents the potential to become involved in assaultive or disruptive behavior, to violate facility rules and regulations, or to threaten discipline, order and safety, and whether the inmate poses a potential risk of escape;

The presence of communicable diseases;

Inmates who are vulnerable and need protection and security;

Mental or emotional problems, suicide risks, medical problems, or special management needs;

Gang affiliation;

The nature of the criminal charges, other pending criminal charges, and prior criminal history;

Treatment, education, or other program needs.

Whether the facility has an objective classification system or a subjective behavior classification system, or however else the classification system may be characterized, Section 1 of Engrossed House Bill No. 1304 requires a correctional facility to have a classification system in place that will provide appropriate housing assignments and supervision levels based on the risk the inmate may present to the staff, other inmates, the facility, and to the community, as well as based on individual inmate needs and problems.